

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

ORDER FOR HEARING TO CONSIDER
PROPOSED AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE

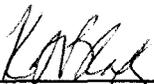
IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center on July 7, 1998 at 9:00 a.m., to consider the proposed amendments to the Rules of Criminal Procedure made by the Supreme Court Advisory Committee on the Rules of Criminal Procedure. A copy of the proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before July 2, 1998, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before July 2, 1998.

Dated: May 8, 1998

BY THE COURT:



Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

MAY 18 1998

FILED

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

JACK NORDBY
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-3502
FAX (612) 348-2131

June 4, 1998

OFFICE OF
APPELLATE COURTS

JUN - 3 1998

FILED

Mr. Frederick Grittner, Esq.
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minn. 55155

Dear Mr. Grittner,

I submit the following written statement, pursuant to the Court's order, concerning the proposed amendments to the Rules of Criminal Procedure.

The proposed new comments to Rule 6.02, subd.1 contain a serious error. The last sentence of the proposal says:

Minn. Const. Article 1, § 5 makes all persons bailable by sufficient sureties for all offenses.

The correct provision is Article 1, Section 7. The cited section -- 5 -- prohibits excessive bail, as does the federal provision. Section 7, on the other hand, is entirely different from the federal provision. I am glad to see this important proposition mentioned, but surely the comments to the rules should cite the Constitution accurately.

Yours truly,


Jack S. Nordby

JSN/pam

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



JOHN L. HOLAHAN
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-9772
FAX (612) 348-2131

June 23, 1998

OFFICE OF
APPELLATE COURTS

JUN 26 1998

FILED

Mr. Frederick K. Grittner
Clerk of the Appellate Courts
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Proposed Amendments to the Rules of Criminal Procedure

Dear Mr. Grittner:

Enclosed please find nine copies of my comments relative to the proposed amendments to the Rules of Criminal Procedure. These comments are contained in a letter that I have contemporaneously forwarded to Justice Tomljanovich in her capacity as chair of the Criminal Rules Committee.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John L. Holahan".

John L. Holahan
Judge of District Court

JLH:rn
Enclosures

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



JOHN L. HOLAHAN
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-9772
FAX (612) 348-2131

OFFICE OF
APPELLATE COURTS

JUN 26 1998

FILED

June 23, 1998

Justice Esther M. Tomljanovich
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Proposed Amendments to the Rules of Criminal Procedure

Dear Justice Tomljanovich:

In the May 29, 1998, edition of Finance & Commerce, the proposed amendments to the Rules of Criminal Procedure were published.

In scanning them, I noticed one provision that gives me concern. The committee is recommending that jury questionnaires be used to supplement questioning under Rule 26.02. While this may be helpful in some cases, the practical effect of this change will be to add dramatically to the time it now takes to select a jury.

As you may recall from your days as a District Court judge, when a jury questionnaire is used, by the time the questionnaire is filled out, photocopied, distributed, and analyzed by the attorneys and the Court, at least one-half of a day goes by.

Of further concern is the comment stating that the jury questionnaire is to be used as a supplement to voir dire. I am sure you will also recall how much you enjoyed listening to seemingly endless irrelevant questions asked by the attorneys during voir dire. I suggest that these proposed changes are going to add to our burden, not lessen it. If the Supreme Court is inclined to grant these amendments, then I strongly urge the Court to include a provision that gives the trial courts authority to impose reasonable time limits for the questioning. If not, I believe an even greater log jam of pending criminal cases will result. In Hennepin County it is not uncommon these days for voir dire to take longer than the actual trial.

Letter to Justice Tomljanovich
June 23, 1998
Page 2

I took the liberty of making some minor changes to Rule 26.02 that I believe would significantly speed up voir dire. One change eliminates that part of the rule always cited as the justification for protracted questioning. Another change gives the trial court the authority to impose reasonable time limits; another reduces the number of peremptory challenges when only a jury of six is being selected. Here are my suggested changes to the rule:

RULE 26.02 - SELECTION OF JURY

Subd. 4. Voir Dire Examination.

(1) Purpose--By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause ~~and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges,~~ and shall be open to the public. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge shall then put to the prospective juror or jurors any questions which the judge thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in Rule 26.03, Subd. 4. Before exercising challenges, ~~and subject to reasonable time limits imposed by the judge,~~ either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

Subd. 6. Peremptory Challenges.

If the offense charged is punishable by life imprisonment the defendant shall be entitled to 15 and the state to 9 peremptory challenges. For any other ~~felony~~ offense, the defendant shall be entitled to 5 and the state to 3 peremptory challenges, ~~and for any other offense the defendant shall be entitled to 3 and the state to 2 peremptory challenges.~~ If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit

Letter to Justice Tomljanovich
June 23, 1998
Page 3

them to be exercised separately or jointly, and in that event the state's peremptory challenges shall be correspondingly increased. ~~All peremptory challenges shall be exercised out of the hearing of the jury panel.¹~~

I will, of course, send nine copies of this letter to Frederick K. Grittner. I just wanted to make sure that at some point you became aware of the concerns of at least one voice from the trial court.

Thank you for your consideration.

Very truly yours,



John L. Holahan
Judge of District Court

JLH:rn

c: Frederick K. Grittner

¹ From a practical point of view this is impossible. How can a peremptory challenge be exercised out of the hearing of the jury? This should be deleted.

Grittner, Fred

From: Monahan, Michael (Judge)
Sent: Thursday, July 02, 1998 10:56 AM
To: Grittner, Fred
Subject: Proposed Amendments to the Criminal Rules

I understand that the Supreme Court is about to consider when to require the preparation of transcripts of audio and video tapes that are introduced and played in criminal trials. I have had a good deal of experience with the problems presented by audio tapes. Without an accompanying transcript, it is extremely difficult to present this evidence in a manner that is useful to the jury and the trial court and still protects a defendant's rights. The equipment available to, and recording practices of, the various law enforcement agencies is such that considerable careful listening is usually required to understand what is being said, let alone who is saying it. My experience is that the availability of a transcript, pretrial, allows the lawyers to identify and correct the most serious problems without the intervention of the court. In turn this means that the defendant's rights are more likely to receive meaningful attention. Finally, the prior preparation of a transcript promotes the efficient use of trial court and jury time. Disputes about the content of audio tapes tend to become protracted delaying trial unnecessarily. For these reasons, I would encourage the Supreme Court to require the party offering an audio or video tape to provide a transcript either prior to trial.

OFFICE OF
APPELLATE COURTS

JUL 02 1998

FILED

MINNESOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

June 30, 1998

OFFICE OF
APPELLATE COURTS

Mr. Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

JUL - 2 1998

FILED

PRESIDENT:
Jon P. Erickson

VICE PRESIDENT:
Mary M. Mateer

TREASURER
Mark S. Wernick

SECRETARY:
Bruce A. Peterson

DIRECTORS:
Robert W. Adams
Charles O. Amdahl
Andrea R. Anderson
Sandra Babcock
Howard Bass
Leonardo Castro
Lisa D. Dejoras
Paul Engh
Fred T. Friedman
Frederick J. Goetz
Charles L. Hawkins
Lisa D. Lodin
Ann Remington
Phillip Resnick
Peggy Rockow-Eskens

EXECUTIVE DIRECTOR:
Nancy K. Klossner

RE: Hearing on Proposed Amendments to Rules of Criminal Procedure

To Whom It May Concern:

I am the current President of the Minnesota Association of Criminal Defense Lawyers and, in that capacity, want to take this opportunity to let you know that our Board has reviewed the proposed rule changes as reflected in your May, 1998, notice. In addition, Lisa Dejoras, who is a member of your Advisory Committee, has given a report to our Board concerning the proposed rule changes.

This is then to advise you that our membership and Board are in support of the recommended rule changes as reflected in the notice of May, 1998. We do have some concern about written jury questionnaires, but only if they are to be used instead of questioning by the Court and lawyers. It is our understanding, however, that the proposed rule looks at the written questionnaire as a supplement to oral voir dire and, with that understanding, we are in support of the rule change.

We also have some concern about the procedure that allows tab charges to be used in cases of gross misdemeanor charges. We are aware that is already being done and realize that the rule change just expands what is current procedures to other charges. We are concerned about the potential abuse of this procedure, but are basically in support of the proposed rule change, assuming that it is used correctly by prosecuting authorities.

The proposed rule changes for pretrial appeals and speedy trial procedures are much needed and appropriate. We heartily support those proposed changes.

1846 North Oxford Street, Roseville, MN 55113 * (612) 488-3521 * Fax (612) 488-7553

MINNESOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Mr. Frederick K. Grittner
Clerk of Appellate Courts
June 30, 1998
Page two

PRESIDENT:
Jon P. Erickson

VICE PRESIDENT:
Mary M. Mateer

TREASURER
Mark S. Wernick

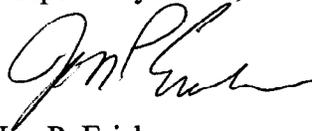
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Ann Remington
Phillip Resnick
Peggy Rockow-Eskens

EXECUTIVE DIRECTOR:
Nancy K. Klossner

We appreciate being heard and hope that our organization will continue to have membership on the Advisory Committee, as we currently do, so that our concerns and views can be heard in the preliminary stages of these rule changes.

Respectfully Yours,



Jon P. Erickson
President of MACDL

DISTRICT COURT
SECOND JUDICIAL DISTRICT

GEORGE O. PETERSEN
JUDGE

July 2, 1998

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, Minnesota 55155-6102

**RE: Hearing on Proposed Amendments to the Rules of
Criminal Procedure No. C1-84-2137**

Dear Mr. Grittner:

I am writing to express my support of the position set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners as it relates to the proposed Amendments to the Rules of Criminal Procedure.

Specifically, I am in support of and strongly encourage the Advisory Committee to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

I recognize that cases arise where counsel for opposing parties are unable to agree on the accuracy of a transcript prepared from audio or video tape recorded by a third party who may or may not have an interest in the outcome of the proceeding. Court reporter transcription is not an answer to that problem.

Some work may need to be done on the reporters' proposal in terms of the "acceptance or redaction" language as it refers to the "record thereof for all purposes, including appeal." There are times when the parties cannot agree on either "acceptance" or "redaction." In those cases, the fact finder (judge or jury) or reviewing court may have to decide what is being said by listening. The parties may have to be satisfied with

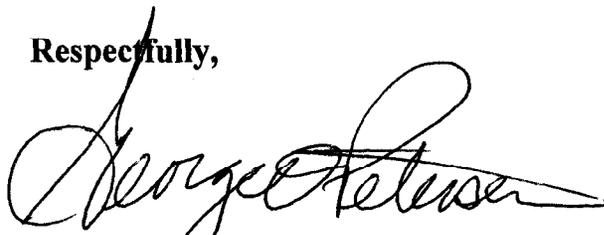
Frederick Grittner

July 2, 1998

Page Two

disagreeing on what the Record is or should be. But for all the reasons set forth in their position paper, the court reporters should not be required to attempt to transcribe evidence, testimony or statements they have not personally witnessed. They should not be held professionally accountable for that task or the accuracy of the resulting transcription.

Respectfully,

A handwritten signature in black ink, appearing to read "George O. Petersen". The signature is fluid and cursive, with a long horizontal stroke at the end.

**George O. Petersen
Judge of District Court
Second Judicial District**

GOPcb

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102



KATHLEEN GEARIN
JUDGE
1613 COURT HOUSE

July 2, 1998

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

I am writing to express my support of the position set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners as it relates to the proposed amendments to the Rules of Criminal Procedure.

Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

I have tried many cases involving tapes, and the absence of a transcript causes problems. When the attorneys provide a transcript, the trials are shorter, presentations are less confusing to jurors, and justice is more likely to be the result.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Gearin".

Kathleen Gearin
Judge of District Court

KG/lmh



STATE OF MINNESOTA

DISTRICT COURT, SECOND JUDICIAL DISTRICT

July 2, 1998

MICHAEL TALBOT DE COURCY
Judge

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

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Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

Thank you for your consideration.

Sincerely,


Michael Talbot De Courcy
Judge of District Court

MTD/lmh

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102

EDWARD S. WILSON
JUDGE
1570 COURT HOUSE

July 2, 1998



OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

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Specifically, I am in support of and strongly encourage the Advisory Committee to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward S. Wilson".

Edward S. Wilson
Judge of District Court

ESW/lmh



STATE OF MINNESOTA
DISTRICT COURT
SECOND JUDICIAL DISTRICT

July 2, 1998

MICHAEL F. FETSCH
JUDGE

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

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Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

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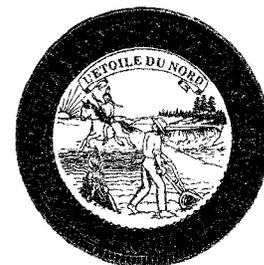
Sincerely,

A handwritten signature in cursive script that reads "Michael F. Fetsch".

Michael F. Fetsch
Judge of District Court

MFF/lmh

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT



J. THOMAS MOTT
JUDGE OF DISTRICT COURT
RAMSEY COUNTY COURTHOUSE
ST. PAUL, MN 55102
(612) 266-9187

July 2, 1998

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

I am writing to express my support of the position set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners as it relates to the proposed Amendments to the Rules of Criminal Procedure.

Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

Thank you for your consideration.

Sincerely,

J. Thomas Mott
Judge of District Court

JTM/lmh



STATE OF MINNESOTA
DISTRICT COURT, SECOND JUDICIAL DISTRICT

July 2, 1998

LAWRENCE D. COHEN
Chief Judge

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

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Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the trial court a transcript thereof.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Cohen", written over a horizontal line.

Lawrence D. Cohen
Chief Judge
Ramsey County District Court

LDC/lmh

STATE OF MINNESOTA
DISTRICT COURT, SECOND DISTRICT
SAINT PAUL 55102



JAMES M. CAMPBELL
JUDGE
(612) 266-8468

July 2, 1998

OFFICE OF
APPELLATE COURTS

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Hearing on Proposed Amendments to the Rules of Criminal Procedure
And Request to Make Oral Presentation
No. C1-84-2137

Dear Mr. Grittner:

I am writing to express my support of the position set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners as it relates to the proposed amendments to the Rules of Criminal Procedure.

Specifically, I am in support of and strongly encourage the Court to adopt a rule requiring any party offering audio or videotape testimony/evidence to provide to the court a transcript thereof.

I hereby request an opportunity to make an oral presentation on July 7, 1998, in this regard based upon the materials submitted by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners. Twelve (12) copies of this request to make oral presentation are enclosed.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Campbell".

James M. Campbell
Judge of Ramsey County District Court

JMC/lmh

TIMOTHY L. OSTBY
JUDICIAL DISTRICT ADMINISTRATOR

REBECCA A. DOLEN,
ASSISTANT
JULIE RUCKER, TCIS COORDINATOR
SHEILA BOVEE, ACCOUNTING
MARILYN ORSTEN, SECRETARY
TODD NOBLE, PC SPECIALIST
JODI SHEPPERD, PC TECHNICIAN
ROSI FUENTES-BETTING, COURT INTERPRETER



MAILING ADDRESS:

KANDIYOHI COUNTY COURTHOUSE
505 BECKER AVE. SW
P. O. BOX 1017
WILLMAR, MN 56201
PHONE: (320) 231-6570
FAX: (320) 231-6577

STATE OF MINNESOTA
EIGHTH JUDICIAL DISTRICT
COUNTIES OF BIG STONE, CHIPPEWA, GRANT, KANDIYOHI, LAC QUI PARLE
MEEKER, POPE, RENVILLE, STEVENS, SWIFT, TRAVERSE, WILKIN, AND YELLOW MEDICINE

June 29, 1998

OFFICE OF
APPELLATE COURTS

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
Saint Paul, Minnesota 55155

JUL - 2 1998

FILED

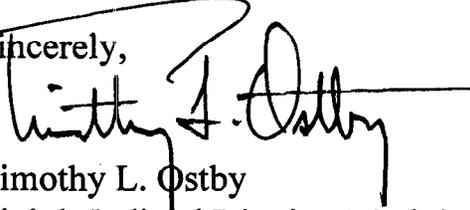
RE: Written Statement on Proposed Amendments to the Rules of Criminal
Procedure from the Eighth Judicial District Judges

Dear Mr. Grittner:

Enclosed you will find the original and twelve copies of a letter to the Minnesota Supreme Court regarding the proposed amendments to the Rules of Criminal Procedure from the judges of the Eighth Judicial District. These comments are to be considered a written statement and an oral presentation is not requested.

If you have any questions, do not hesitate to contact me.

Sincerely,

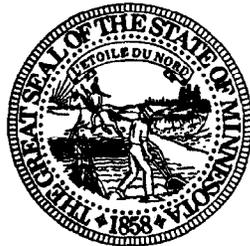

Timothy L. Ostby
Eighth Judicial District Administrator

Enclosures – original and twelve copies

cc: Eighth Judicial District Judges

EIGHTH JUDICIAL DISTRICT JUDGES:

BRUCE W. CHRISTOPHERSON
STEVEN E. DRANGE
PETER A. HOFF
JOHN C. LINDSTROM
PAUL A. NELSON
KATHRYN N. SMITH



EIGHTH JUDICIAL DISTRICT JUDGES:

GERALD J. SEIBEL
RANDALL J. SLETER
DONALD M. SPILSETH
JON STAFSHOLT
JOHN J. WEYRENS

STATE OF MINNESOTA
EIGHTH JUDICIAL DISTRICT
COUNTIES OF BIG STONE, CHIPPEWA, GRANT, KANDIYOHI, LAC QUI PARLE
MEEKER, POPE, RENVILLE, STEVENS, SWIFT, TRAVERSE, WILKIN, AND YELLOW MEDICINE

OFFICE OF
APPELLATE COURTS

JUL - 2 1998

FILED

Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
Saint Paul, Minnesota 55155

RE: Proposed Amendment to the Rules of Criminal Procedure, Rule 26.03, subd. 13(4)

Dear Justices:

The judges of the Eighth Judicial District unanimously oppose the proposed amendment to Rule 26.03, subd. 13(4) regarding notices to remove. It is respectfully requested that the Court consider the following comments in reviewing the proposal before you.

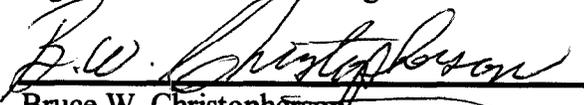
- The proposal expands the circumstances under which a notice to remove may be filed and threatens the current judicial resources of the trial court. The current rule provides that "The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove the judge assigned to *a trial or hearing*." (Emphasis added.) The amendment would allow the filing of "a notice to remove the judge assigned to *any proceeding under these rules*." (Emphasis added.) Expanding the notice to remove to include the signing of criminal complaints and presiding over bail, Rule 5 and Rule 8 hearings may place tremendous burdens on the judicial resources of the trial court. Consider the prospect of blanket notices to remove being filed against a judge in a remote area of the state by either prosecutors or defense attorneys. A judge could effectively be eliminated from hearing any type of criminal case including petty misdemeanor and traffic arraignments. In this situation, the trial court would be forced to reassign judges or cause unnecessary delay in criminal proceedings. This problem would be further magnified in a small county that has no resident judge. One or possibly two removals would require another judge to be taken out of the normal rotation for assignment. This would seriously disrupt the case flow management process and cause delay, especially with short time frames contained elsewhere in the rules.
- The notice to remove threatens judicial independence. Judges have experienced threats that a notice to remove may be filed even in procedural matters, such as whether a continuance should be granted or a personal appearance should be waived. Some removals are purely punitive in nature, motivated by anger or intent to punish a judge for a decision or ruling considered to be adverse to them with the intended result that the judge will think twice before doing it again. Although the Minnesota Rules of Professional Conduct are not before the Court at this time, it is strongly suggested that such actions be added to the professional misconduct provisions of the rules. The proposed amendments will only encourage this type of conduct and erode the independence of judges to manage the caseload of the trial court in a fair and efficient manner.

- The notice to remove threatens the separation of powers. In several areas of the state, including the Eighth Judicial District, either prosecutors or defense attorneys are filing blanket notices to remove because of the perception that the judge may not be sympathetic to their point of view. The effect of this use of notices to remove seriously undermines the constitutional separation of powers.
- The proposal further provides that court administration shall “automatically” assign a new judge to the case when a notice has been timely served and filed. While filing may be relatively easily determined, the timeliness and service requirements are not as easy to determine as it may appear. Service requirements under Rule 33 and timeliness requirements under Rule 34 vary from civil procedural rules and are not easily determined in each case by non law-trained personnel. The present rule requiring review by the assigned judge should not be changed.

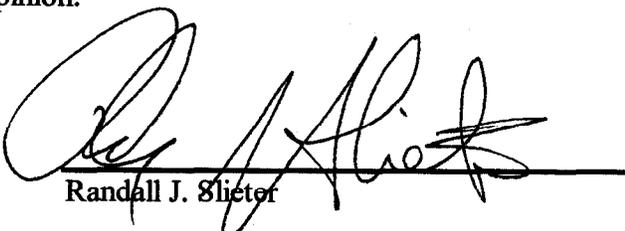
Apart from broadening the applicability of the rule, many, though not all of the judges of the Eighth Judicial District, favor further restriction or elimination of the notice to remove. We suggest that action by the Supreme Court about the notice to remove be deferred and that comments be sought from the Conference of Chief Judges, the Minnesota District Judges Association and other interested parties.

Thank you for the opportunity to express our opinion.

Eighth Judicial District Judges:



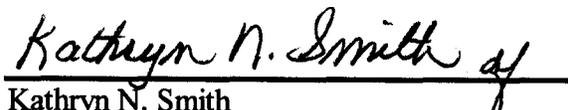
 Bruce W. Christopher



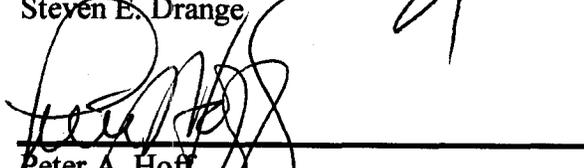
 Randall J. Slieter



 Steven E. Drange



 Kathryn N. Smith



 Peter A. Hoff



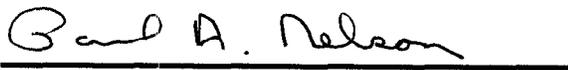
 Donald M. Spilseth



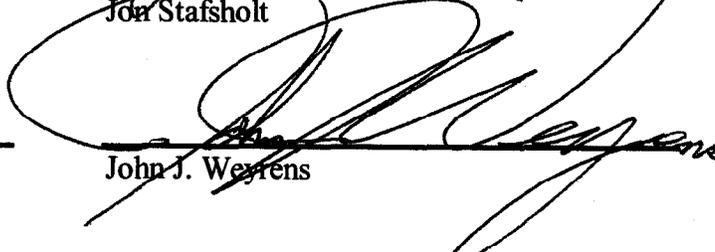
 John C. Lindstrom



 Jon Stafholt



 Paul A. Nelson

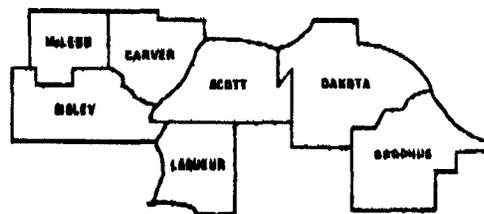


 John J. Weyrens



 Gerald J. Seibel

THOMAS M. MURPHY
JUDGE
DAKOTA COUNTY JUDICIAL CENTER
1850 WEST HIGHWAY 55
HASTINGS, MINNESOTA 55033
TELEPHONE (612) 438-4325



STATE OF MINNESOTA
FIRST JUDICIAL DISTRICT

July 6, 1998

OFFICE OF
APPELLATE COURTS

JUL 6 - 1998

FILED

Hon. Esther M. Tomljanovich, retired
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Dear Justice Tomljanovich:

I have had the opportunity to review the proposed amendments to the Rules of Criminal Procedure dated May 14, 1998. There are two matters that I would like to call to the attention of the Committee.

First, inasmuch as the courts are required to implement these changes, I believe it is only reasonable that you allow the Conference of Chief Judges to consider and offer an opinion on the same. It would seem that the slight delay would be outweighed by the need for the courts' input on the proposed changes.

Second, I think the Committee should consider the additional burdens placed on the Public Defender staff and the courts by implementing this lengthy "Petition to Enter Plea of Guilty by Pro Se Defendant". As a former trial judge, I'm sure you can understand the time consuming burdens this would place on the Court and Public Defenders during misdemeanor arraignments. As the liaison from the First District Judges to the First District Public Defender staff, I am aware that they are under budgeted and under staffed. Therefore, before these rules are implemented, I believe your commission should give some serious consideration to the need for additional funding for both the courts and the Public Defender system that will be required to implement these changes.

Very truly yours,

Thomas M. Murphy
Judge

CC: Hon. Kathleen Blatz, Chief Justice
Fred Grittner, Supreme Court Administrator
Joe Carter, Chief Public Defender, First Judicial District

Hennepin County Court Reporters Association

Fourth Judicial District

Government Center 1251 Courts Tower Minneapolis, Minnesota 55487 (612) 348-3208 FAX (612) 348-2131

MEMORANDUM

OFFICE OF
APPELLATE COURTS

JUN 29 1998

FILED

TO: Supreme Court
c/o Frederick Grittner
Clerk of Appellate Court
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

FROM: Lynne Krenz
President Hennepin County Court
Reporters Association

DATE: June 26, 1998

RE: Proposed Amendments to Rules of Criminal Procedure

On behalf of the Hennepin County Court Reporters Association, I support the position as set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners.

D. L. Lindee

Telephone (612) 430-6357

Registered Merit Reporter
Washington County Government Center
14900 61st Street North
Stillwater, Minnesota 55082

MEMORANDUM

OFFICE OF
APPELLATE COURTS

JUL 1 - 1998

FILED

DATE: June 26, 1998

TO: Supreme Court
C/O Frederick Grittner
Clerk of Appellate Court
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

FROM: Douglas L. Lindee
10th Judicial District Reporter Representative

RE: Proposed Amendments to Rules of Criminal Procedure

On behalf of the 10th Judicial District Court Reporters, I support the position as set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners.

The Ramsey County Court Reporters Association
Amy Ruemelin, President
1010 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
612.266.9188

OFFICE OF
APPELLATE COURTS

July 2, 1998

JUL 2 - 1998

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

Ms. Amy Ruemelin, President, Ramsey County Court Reporters Association, and Ms. Karen Lebens, President-Elect, Minnesota Association of Verbatim Reporters and Captioners, respectfully request an opportunity to make an oral presentation on July 7, 1998, regarding proposed amendments to the Rules of Criminal Procedure.

Enclosed are twelve (12) copies of the material to be presented, as well as twelve (12) copies of this request to make oral presentation.

Thank you.

Sincerely,



Linda Horgan
Ramsey County Court Reporters Association

LMH/id
enclosures

cc: Amy Ruemelin
Karen Lebens
Lorilee Fink

The Ramsey County Court Reporters Association
Amy Ruemelin, President
1010 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
612.266.9188

OFFICE OF
APPELLATE COURTS

JUL 02 1998

FILED

July 2, 1998

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
St. Paul, MN 55155-6102

Re: Proposed Amendments to the Rules of Criminal Procedure
No. C1-84-2137

Dear Mr. Grittner:

Relative to the Supreme Court hearing scheduled for July 7, 1998, regarding proposed amendments to the Rules of Criminal Procedure, enclosed for filing are:

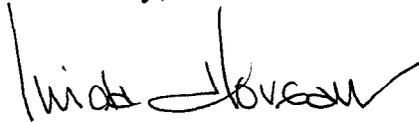
- 1) an original and twelve (12) copies of a request to make oral presentation on behalf of the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners;
- 2) an original and twelve (12) copies of the material to be presented by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners;
- 3) an original and twelve (12) copies of a request to make oral presentation on behalf of Judge James M. Campbell, Judge of Ramsey County District Court; and
- 4) an original and twelve (12) copies each of letters by seven other Ramsey County District Court Judges in support of the position of the Ramsey County

Mr. Frederick Grittner
Clerk of the Appellate Courts
July 2, 1998
Page two

Court Reporters Association and the Minnesota Association of Verbatim
Reporters and Captioners.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Horgan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Linda Horgan
Ramsey County Court Reporters Association

LMH/id
enclosures

No. C1-84-2137

State of Minnesota

OFFICE OF
APPELLATE COURTS

In Supreme Court

JUL 2 - 1998

FILED

In Re the Matter of:

Proposed Amendments to the
Rules of Criminal Procedure

DATE OF HEARING: JULY 7, 1998

Submitted by:

RAMSEY COUNTY COURT
REPORTERS ASSOCIATION
By: Amy Ruemelin, President
and Linda Horgan, Member
1010 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
612.266.9188

MINNESOTA ASSOCIATION OF
VERBATIM REPORTERS
AND CAPTIONERS
By: Karen Lebens, President-Elect
and Lorilee Fink, Vice President
c/o C12 Government Center
300 South Sixth Street
Minneapolis, MN 55487
612.348.3206

TO: Frederick Grittner, Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

The Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters & Captioners respectfully make the following comments and requested revisions regarding proposed amendments to the Rules of Criminal Procedure, specifically with regard to:

Rule 11.02, subd. 1. (Item #21 of Advisory Committee Proposed Amendments);

Comments on Rule 11.02 (Item #23 of Advisory Committee Proposed Amendments);

Rule 12.04, subd. 1 (Item #28 of Advisory Committee Proposed Amendments);

Comments on Rule 12.04, subd. 1 (Item #29 of Advisory Committee Proposed Amendments);

Rule 26.03, subd. 15. Evidence. (Item #59 of Advisory Committee Proposed Amendments);

Comment on Rule 26.03, subd. 15 (Item #66 of Advisory Committee Proposed Amendments);

Rule 28.02, subd. 9 (Item #78 of Advisory Committee Proposed Amendments); and

Comments on Rule 28.02, subd. 9 (Item #82 of Advisory Committee Proposed Amendments);

all of which amendments address the issue of the transcription of audio and videotape

exhibits and testimony presented by parties.

BACKGROUND

The undersigned court reporter associations seek a uniform rule requiring parties to provide written transcripts of audio/videotape exhibits/testimony offered during criminal court proceedings for the reasons cited herein.

As this Court is aware, audio and videotapes often are introduced during various court proceedings, whether pretrial or trial (particularly with the advent of *State v. Scales*) These tape-recordings often contain substantial portions which are indiscernible by the listener due to poor tape quality, overlapping speakers and extraneous background noise (not to mention the inability to distinguish among unseen and unidentified speakers).

Professional verbatim court reporters are charged with the task of producing transcripts, certified as to accuracy, which reflect actual **live** proceedings which transpire in their presence. Court reporters assure the integrity of the record by requesting that speakers identify themselves, speak one at a time, and repeat that which is not understood. This safeguard is wholly unavailable to the reporter during the playing of prerecorded audio/videotapes in the courtroom. Court reporters by virtue of their professional training do not possess the unique ability to understand the incomprehensible. As professionals, court reporters are dedicated to the accuracy of the record, and cannot allow gaps in transcripts of proceedings filled with such parentheticals as “(unintelligible),” “(incomprehensible),” or “(baby crying in background obliterating

speakers) ”

Further, court reporters must prepare transcripts on their personal time, spending many hours a week (including weekends) in this pursuit. The transcription of audio/videotapes most often requires **repeated** listening to the same material in order to create a “usable record,” which the verbatim reporter cannot certify as to accuracy since s/he was not present when the speakers created the tape-recording.

Court reporters are compensated per page of transcript recorded at live proceedings over which the reporter wields some control during the making of the record. Requiring official court reporters to transcribe audio/videotapes would prove a poor use of resources because reporters, in order to be fairly compensated as professionals, will be forced to charge an additional hourly rate to perform the “clerical” task of transcribing prerecorded exhibits for parties.

For example, pursuant to order of former Chief Judge Kenneth Fitzpatrick, Ramsey County court reporters are compensated at a rate of \$3.49 per page for an appeal transcript (original and three copies). A 911 audiotape introduced into evidence may translate into a mere five pages of transcript; however, the reporter may have to listen to the tape repeatedly over the course of many hours in an attempt to discern what the speakers are saying (or yelling, screaming, crying, etc.), which speakers are speaking, etc. The standards of verbatim court reporting are very high, and preparing a less-than-accurate transcript is unconscionable.

A general method by which custodial-interview (*Scales*) tapes are transcribed by the Ramsey County attorney's office is as follows: First, clerical staff in that office type a draft transcript while listening to the tape(s). The draft transcript is then sent to the law-enforcement officers who were **actually present** for the interview, who listen to the tape(s) while going through the transcript and making corrections to it. This is necessary because only those who were present at the time the interview was taped can make accurate determinations as to the identity of the speakers and the actual words spoken. This procedure evidences the difficulty of the task of preparing a verbatim transcript by a court reporter who was not present for the actual live proceedings.

Most judges in Ramsey County District Court require the provision of a transcript (by the offering party) to accompany any testimony or exhibit offered in the form of audio/videotape,¹ recognizing that this is a transcription task more appropriately performed by a typist who can listen to the tape-recording(s) as many times as necessary to produce a usable (noncertified) transcript.

Additionally, it imposes a tremendous hardship to require court reporters, who are responsible for purchasing all of their own transcription equipment, including computers, software, printers, etc., to purchase and/or have available to them all of the various equipment necessary to transcribe every kind of audio/videotape offered during the

¹ It is the position of Chief Judge Lawrence Cohen that this is Ramsey County District Court bench policy.

course of a court proceeding. For example, audio tapes come in the form of minicassette, microcassette and reel-to-reel; the transcription of videotapes requires a reporter to use his/her home VCR with constant stopping, rewinding, starting, etc., since these tapes often must be listened to many times in order to create a court reporter's transcript.

We believe that trial judges will support our position and agree that proceedings move along much more efficiently when offering parties provide written transcripts of the audio/videotapes they intend to offer. This assists the court in determining what portions, if any, of the audio/videotapes properly may be played before a jury simply by reviewing the transcript. Also, when audio/videotapes are played in open court before juries, oftentimes the speech is difficult to discern. Accordingly, when jurors are provided with copies of the transcripts, as reviewed and approved by the court and counsel, they can better understand the evidence they are being asked to consider.

As a result of the growing concern among court reporters regarding the transcription of audio/videotape exhibits/testimony, the Ramsey County Court Reporters Association sought the assistance of the Supreme Court Advisory Committee on Rules of Criminal Procedure, requesting a rule requiring that, if any party offers into evidence audiotape or videotape exhibits or testimony, that party also shall provide to the court a transcript of the proposed exhibit or testimony, which transcript shall be made a part of the record for all purposes, including appeal; although such a rule would not govern whether any such transcript was admissible as evidence in the case.

Specifically, the rule sought by verbatim court reporters is:

Any audiotape, videotape or other prerecorded evidence or testimony, whether an exhibit, deposition, interview, statement, or otherwise, offered by a party during any court proceeding shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

While we appreciate the efforts of the advisory committee in response to our request for an amended rule, we believe that the proposed amendments do not significantly change the existing language of Rule 28.02, subd. 9. For instance, while the new rules “permit” parties to provide transcripts, parties have never been precluded from doing so. Additionally, as proposed, Rule 28.02, subd. 9, relieves the reporter from the necessity of certifying the correctness of any transcription of a prerecorded tape; however, reporters have never been in a position to certify as to accuracy proceedings which did not occur in their presence and over which they have no control. The proposed amendments also require a post-trial hearing before the trial court in the event the parties disagree as to the accuracy of the reporter’s transcript, a procedure that could be eliminated entirely if parties were required to provide transcripts of such tapes at trial.

**COMMENTS REGARDING ADVISORY COMMITTEE’S
PROPOSED AMENDMENTS**

The following section consists of restatement of the relevant proposed amended rules and comments thereto as submitted by the advisory committee, followed by

our comments and requested revisions.

I. Rule 11.02, subd. 1. Evidence. (Item #21.)

Subd. 1. Evidence. If the defendant or prosecution has demanded a hearing on either of the issues specified by Rule 8.03, the court shall hear and determine them upon such evidence as may be offered by the prosecution or the defense. If either party offers into evidence a videotape or audiotape exhibit, that party **may** also provide to the court a transcript of the proposed exhibit, which will be made a part of the record. (Emphasis added.)

* * *

(Advisory Committee) Comments on Rule 11.02. (Item #23.)

Rule 11.02, subd. 1, **permits** any party offering a videotape or audiotape exhibit to also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record **if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.** (Emphasis added.)

Comments: “Permitting” a party offering a videotape/audiotape exhibit to also provide a transcript does nothing to alleviate the problems cited herein for which court reporters have sought help. Further, the existing rules have never precluded parties from providing a transcript. Unless directed to do so, parties will assume that official court reporters can perform the clerical task of transcribing their exhibits for them at the time of trial.

Requested Revision: Amend Rule 11.02, subd. 1, by substituting the following language for that proposed (underlined) by the Advisory Committee, and amending the comment accordingly:

Any audiotape, videotape or other prerecorded evidence or testimony offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

II. Rule 12.04, subd. 1 (Item #28).

Subd. 1. Evidence. If the defendant or the prosecution has demanded a hearing on the issue specified by Rule 7.01, the court shall hear and determine the issue upon such evidence as may be offered by the prosecutor or the defense. If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record. (Emphasis added.)

* * *

(Advisory Committee) Comments on Rule 12.04, subd. 1. (Item #29.)

Rule 12.04, subd. 1, permits any party offering a videotape or audiotape exhibit to also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9. (Emphasis added.)

Comments: (See comments on Rule 11.02 herein.)

Requested Revision: Amend Rule 12.04, subd. 1, by substituting the following language for that proposed (underlined) by the Advisory Committee, and amending the comment accordingly:

Any audiotape, videotape or other prerecorded evidence or testimony offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

III. Rule 26.03, subd. 15. Evidence. (Item #59.)

Subd. 15. Evidence. In all trials the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules. If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record. (Emphasis added.)

* * *

(Advisory Committee) Comments on Rule 26.03, subd. 15. (Item #66.)

Rule 26.03, subd. 15, provides that any party offering a videotape or audiotape exhibit may also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9. (Emphasis added.)

Comments: (See comments on Rule 11.02 herein.)

Requested Revision: Amend Rule 26.03, subd. 15, by substituting the

following language for that proposed (underlined) by the Advisory Committee, and amending the comment accordingly:

Any audiotape, videotape or other prerecorded evidence or testimony, whether an exhibit, deposition, interview, statement, or otherwise, offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

IV. Rule 28.02, subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. (Item #78.)

Subd. 9. . . . Any videotape or audiotape exhibits admitted at trial or hearing shall, if not previously transcribed, be transcribed at the request of either the appellant or the respondent unless the parties have already stipulated to the accuracy of a transcript of such exhibit previously made a part of the record in the trial court. The transcript of any such exhibit then shall be included as part of the record. It shall not be necessary for the court reporter to certify the correctness of any such videotape or audiotape transcript. . . .

* * *

(Advisory Committee) Comments on Rule 28.02, subd. 9. (Item #82.)

If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the trial court record, that becomes part of the record on appeal and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. The exhibit then must be transcribed, but the court reporter need not certify the correctness of the exhibit transcript as is otherwise required for the remainder of the transcript under Rule 110.02, subd. 4, of the Rules of Civil

Appellate Procedure. This exception is made because of the difficulties often encountered in preparing such a transcript. If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that party may seek to correct the transcript either by stipulation with the other party or by motion to the trial court under Rule 110.05 of the Rules of Civil Appellate Procedure. (Emphasis added.)

Comments: (See comments on Rule 11.02 herein.) While the rule only requires the transcription of audio/videotapes “at the request of either the appellant or the respondent,” it should be noted that standard requests for transcripts from the State Public Defender automatically require the transcription of any audio/videotapes.

Additionally, court reporters have never been in a position to certify as to accuracy the transcription of any prerecorded audio/videotapes since they were not present at the time the recording was made.

Further, if no transcript is provided by the offering party at the time of trial, and if any party objects to the accuracy of the reporter's “post-trial” transcription of an audio/videotape exhibit, the remedy becomes complicated by necessitating a post-trial motion before the trial court. Whereas, if a transcript is provided by the offering party at trial, all parties and the court are aware of its contents at the time of trial and effectively can handle any objections to the accuracy of the transcript prior to the appeal process.

Requested Revision: Amend that portion of Rule 28.02, subd. 9, as cited herein, by substituting the following language and amending the comment accordingly:

Any audiotape, videotape or other prerecorded evidence or testimony, whether an exhibit, deposition, interview, statement, or otherwise, offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

CONCLUSION

Although in Ramsey County District Court it is the common practice of judges to require the submission of a written transcript to accompany any audio-videotape evidence or testimony offered, court reporters statewide are concerned at the lack of a uniform rule **requiring** the offering party to provide a transcript thereof. Court reporters are professional, verbatim preservers of the **live** record, not clerk-typists who can spend many hours at a typewriter trying to determine sounds made by electronic means, which the court reporter cannot certify as to accuracy. And while some may argue that the preparation of these transcripts by typists is costly, it would be far more costly to compensate professional court reporters by the hour to perform such clerical duties for the parties as transcribing their exhibits for them. Additionally, the offering party is in the best position to prepare a transcript, which enables it to fully present its case to the fact-finder, and it would be beneficial to a judge and/or jury to have a written transcript at the time any audiotape or videotape is presented.

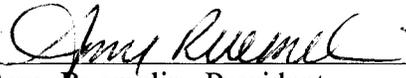
Finally, adoption of the language which we are proposing here offers an all-encompassing, uncomplicated method by which to handle uniformly the ever-increasing

instances of prerecorded materials in the form of exhibits and testimony being offered in court proceedings.

Dated: July 2, 1998

Respectfully submitted,

THE RAMSEY COUNTY
COURT REPORTERS ASSOCIATION

By: 
Amy Ruemelin, President

By: 
Linda Horgan, Member

1010 Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
612.266.9188

MINNESOTA ASSOCIATION OF
VERBATIM REPORTERS & CAPTIONERS

By: 
Karen Lebens, President Elect

c/o Lorilee Fink, Vice President
C12 Government Center
300 South Sixth Street
Mineapolis, MN 55487
612.348.3206

SEMCRA

Southeastern Minnesota Court Reporters Association of the Third Judicial District

CHRISTINE CLARK AND GARY OFSTEDAHL
CO-PRESIDENTS

ALETA CHRISTOPHERSON
SECRETARY

DISTRICT COURT
151 SE FOURTH STREET
ROCHESTER, MN 55904
PHONE: 507/285-8185
FAX: 507/285-8996

MEMORANDUM

TO: Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

FROM: Christine Clark, Co-President
Southeastern Minnesota Court Reporters Association

DATE: June 29, 1998

RE: C1-84-2137, Proposed Amendments to the Rules of Criminal Procedure
Date of hearing: July 7, 1998

OFFICE OF
APPELLATE COURTS
JUL - 2 1998
FILED

On behalf of the Southeastern Minnesota Court Reporters Association, I offer our support of the position set forth by the Minnesota Association of Verbatim Reporters and Captioners relative to the Proposed Amendments to the Rules of Criminal Procedure.

cc Gary Ofstedahl, Co-President SEMCRA
Amy L. Keller, Court Reporter Representative to the Conference of Chief Judges
Lorilee Fink, Vice President/Official, MAVRC
Karen Lebens, President-Elect, MAVRC
Amy Ruemelin, President, Ramsey County Court Reporters Association

AMY L. KELLER
District Court Reporter

151 4th Street SE ♦ Rochester, MN 55904 ♦ 507/285-8185 ♦ FAX 507/285-8996

MEMORANDUM

**OFFICE OF
APPELLATE COURTS**

JUL - 2 1998

FILED

TO: Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

FROM: Amy L. Keller
Court Reporter Representative to the Conference of Chief Judges

DATE: June 29, 1998

RE: C1-84-2137, Proposed Amendments to the Rules of Criminal Procedure
Date of hearing: July 7, 1998

I offer my support of the position set forth by the Minnesota Association of Verbatim Reporters and Captioners relative to the Proposed Amendments to the Rules of Criminal Procedure.

cc Lorilee Fink, Vice President/Official, MAVRC
Karen Lebens, President-Elect, MAVRC
Amy Ruemelin, President, Ramsey County Court Reporters Association

FIRST JUDICIAL DISTRICT COURT REPORTERS ASSOCIATION

Counties of: Carver, Dakota, Goodhue, Le Sueur,
McLeod, Scott, and Sibley

M E M O R A N D U M

**OFFICE OF
APPELLATE COURTS**

TO: Supreme Court Advisory Committee
on Rules of Criminal Procedure
State Court Administration
120 Judicial Center
St. Paul, MN 55155

JUL - 2 1998

FILED

FROM: Paul H. Lyndgaard, President
First Judicial District Court Reporters Association
Le Sueur County Courthouse
88 South Park Avenue
Le Center, MN 56057

RE: Proposed Amendments to the Rules of Criminal Procedure

DATE: June 30, 1998

On behalf of the First Judicial District Court Reporters Association, I support the position as set forth by the Ramsey County Court Reporters Association and the Minnesota Association of Verbatim Reporters and Captioners.

Paul H. Lyndgaard

7/7 copy to Fred Guttner

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT



HONORABLE GARY J. MEYER
CHIEF JUDGE

CHAMBERS
WRIGHT COUNTY COURTHOUSE
10 SECOND STREET NW, ROOM 201
BUFFALO, MINNESOTA 55313-1192
(612) 682-7539

SHERBURNE COUNTY COURTHOUSE
13880 HIGHWAY 10
ELK RIVER, MINNESOTA 55330-4608
(612) 241-2800

July 6, 1998

Chief Justice Kathleen A. Blatz
and Associate Justices
Minnesota Supreme Court
Minnesota Judicial Center
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

JUL 7 - 1998

FILED

Re: Proposed Rules of Criminal Procedure

Dear Chief Justice Blatz and Associate Justices

As Chair of the Administration Committee of the Conference of Chief Judges, I placed the issue of the new Rules of Criminal Procedure on the agenda for our June 25 meeting. Because of concern over some of the proposed Rules, I appointed a subcommittee headed by Chief Judge Gerald Wolf of the Third District, to review them, and report on July 17.

The concern I have heard from trial judges relates primarily to Rule 5.02 Sub. 1 (3), "Waiver of Counsel" and Rule 26.03, "Notice to Remove," although there may be others.

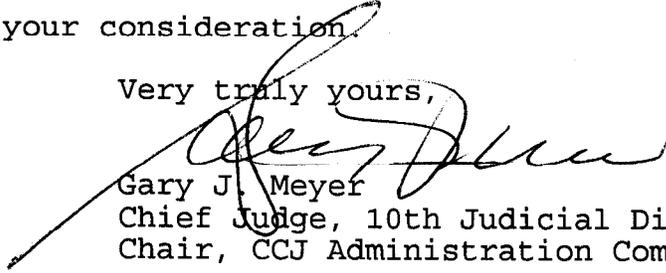
This Wednesday morning here in Wright County (Buffalo) in misdemeanor traffic and arraignment court we will have almost 100 defendants. Many will plead guilty, without an attorney. Because misdemeanors are "punishable by incarceration," the rule will require, before I accept the plea from probably 60 of those 100 defendants, that in addition to advising them of the nature of the charges and possible punishment, I must advise them of the possible defenses, the statutory offenses included within the charges, possible mitigating circumstances, and all "other facts essential to a broad understanding of the consequences of the waiver," including the "advantages and disadvantages of the decision to waive counsel." It will be virtually impossible for me to follow this rule in that courtroom.

The change to Rule 26.03 Sub. 13 (4) puts an unnecessary burden on the Chief Judge of each district. Presently, anyone who is aggrieved by the determination of the trial judge not to sign the notice of removal (as untimely, for example) may ask the Chief Judge to remove that judge. This rule would require that the Chief Judge sign all notices of removal. It is even more of a burden in the eight of the ten districts which are not one county districts.

I have attempted to summarize my understanding of two of the concerns I have heard discussed. The Administration Committee and the Conference of Chief Judges needs time to formulate its concerns and discuss them with their local trial judges. I ask, on behalf of the Conference, that you delay determination of this issue until we have had a chance to do that.

Thank you for your consideration.

Very truly yours,



Gary J. Meyer
Chief Judge, 10th Judicial District
Chair, CCJ Administration Committee

LESLIE M. METZEN
JUDGE

CHAMBERS 119



7/28 copy to Fred Grittnes
" " Mike Johnson
DAKOTA COUNTY JUDICIAL CENTER
HIGHWAY 55
HASTINGS, MINNESOTA 55033

612 438-4325

STATE OF MINNESOTA
DISTRICT COURT, FIRST JUDICIAL DISTRICT OFFICE OF
APPELLATE COURTS

July 23, 1998

JUL 29 1998

FILED

Chief Justice Kathleen Blatz
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

C1-84-2137

Re: Proposed Changes to Rules of Criminal Procedure

Dear Chief Justice Blatz:

As you know, I am currently serving as Chair of the Administration Committee for the Conference of Chief Judges. At our meeting last Friday, the committee discussed the proposed changes to the Rules of Criminal Procedure and the committee made some recommendations to the full Conference. This letter is to advise you and the other Justices of concerns raised relative to the proposed changes.

Two rules in particular, would greatly impact the trial bench. Rule 5.02, Subd.1(3) Waiver of Counsel, requires a judge to advise a defendant of: the nature of the charges, the statutory offenses included within the charges, the range of allowable punishments, the possible defenses, the possible mitigating circumstances, and all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel. Trial judges routinely handle large volume arraignment calendars, seeing 50 to 100 defendants in a morning, many charged with misdemeanor offenses. The advisory required by the proposed rule could not be included in a group advisory because too many specifics are required. In addition, many of the tab charges and citations do not include police reports, which might suggest possible defenses and mitigating circumstances. Most judges would not be able to carry out the mandate of this rule due to time constraints and lack of information. The Conference of Chief Judges urges the Court to reject the proposed changes to Rule 5.02, Subd.1(3).

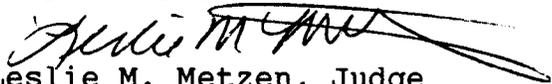
The second area of major concern arises in Rule 26.03, Subd.13(4) Notice to Remove. By expanding the language to include a judge assigned to "any proceeding" a defendant may be prejudiced

Page Two
July 23, 1998
Chief Justice Kathleen Blatz

by not removing a judge who presides at a First Appearance or bail hearing, when that judge is later assigned to preside over an Omnibus or trial. In addition, the Chief Judges oppose changing their authority to make assignment of a replacement judge to the court administrator. It should also be noted that the timeliness issue may never come to the attention of the court where a notice to remove is filed with the court administrator and they have direct authority to assign a new judge. Again, we urge the Court to reject the proposed changes to Rule 26.03, Subd.13(4).

We certainly appreciate all the work the Rules Committee has put in to come up with the proposed changes. Most of them are necessary and important. Trial judges will strive to put them into practice, if adopted. If changes are necessary to the Rules we object to, the Conference is proposing different language, which you will find attached to this letter. Judge Jerry Wolf chaired a subcommittee which reviewed all the proposed changes and came up with modifications of language for Rule 4.02 Subd.5(3); Rule 5.02 Subd.1(3); and Rule 26.03 Subd.13(4). The Rule 4.02 changes are not substantive and are self explanatory. We sincerely thank the members of the Court for their time and attention to the concerns we have raised.

Very truly yours,


Leslie M. Metzen, Judge

cc: Chiefs and Assistant Chief Judges
Associate Justices, Minn. Supreme Court
Chief Judge Edward Toussaint, Jr.

I. Rule 4.02

Rule 4.02, subd. 5. Appearance Before Judge or Judicial Officer.

Amend part (3) of this rule as follows:

(3) Complaint or Tab Charge; Misdemeanors; ~~Designated Gross Misdemeanors Charged Under Minn. Stat. §169.121 or Minn. Stat. §169.129.~~ If there is no complaint made and filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross misdemeanor charge for those offenses designated under Rule 1.04(b) under Minn. Stat. §169.121 or Minn. Stat. §169.129, the clerk shall enter upon the records a brief statement of the offense charged including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. ~~This brief statement shall be a substitute for the complaint and is referred to as a tab charge as defined in Rule 1.04(c) (text deleted).~~ However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint shall be made and filed. ~~If the defendant has not already pled guilty and a complaint has not been made and filed in~~ In a designated gross misdemeanor case commenced by a tab charge charged under Minn. Stat. §169.121 or Minn. Stat. §169.129, the complaint shall be made, served and filed within 48 hours of the defendant's appearance on the tab charge if the defendant is in custody or within 10 days of the defendant's appearance on the tab charge if the defendant is not in custody, provided that in any such case the complaint shall be made, served and filed before the court accepts a guilty plea to any designated gross misdemeanor.

II. Rule 5.02

Option 1: Waiver of Counsel. If a defendant appearing without counsel upon a charge punishable by incarceration does not request counsel and wishes to represent himself or herself, the court shall ensure that a voluntary and intelligent written waiver of the right to counsel is entered in the record. If the defendant refuses to sign the written waiver form, the waiver shall be made orally on the record. (Remaining Text Deleted)

Option 2: Waiver of Counsel. If a defendant appearing without counsel upon a felony or gross misdemeanor charge (text deleted) does not request counsel and wishes to represent himself or herself, the court shall ensure that a voluntary and intelligent written waiver of the right to counsel is entered in the record. If the defendant refuses to sign the written waiver form, the waiver shall be made orally on the record. Prior to accepting any waiver, the trial court shall advise the defendant of the following: the nature of the charges, the statutory offenses included within the charges, the range of allowable punishments, the possible defenses, the possible mitigating circumstances, and all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel. The court may appoint the public defender for the limited purpose of advising and consulting with the defendant as to the waiver.

(b) Misdemeanors. When the defendant is charged with a misdemeanor punishable upon conviction by incarceration, the court shall not accept a waiver of counsel unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of the defendant's choosing or by assignment. The waiver shall be in writing or on the record.

Subd. 2. Appointment of Advisory Counsel. The court may appoint "advisory counsel" to assist the accused who voluntarily and intelligently waives the right to counsel.

iii. Rule 15, Appendix B

40. Rule 15, Appendix B.

Amend number 7a of Appendix B to Rule 15 as follows:

7a. WAIVER OF ATTORNEY. ~~I give up my right to be represented by an attorney and any right I might have to request that an attorney be appointed to represent me.~~ I have been advised of the nature of the charges and statutory offenses included in the charges against me, the maximum sentence permitted, (text deleted) and other relevant facts so that I understand the advantages and disadvantages of waiving my right to any attorney. I have read over and completed a Petition to Proceed as Pro Se Counsel (Form 11) and provided that Petition to the court on _____. ~~Knowing the consequences of giving up my right to counsel, I waive my right to be represented by an attorney.~~

IV. Rule 15, Appendix C

5a. I understand that I have an absolute right to have an attorney represent me at any stage of these proceedings, including a guilty plea.

b. I have read over and completed a Petition to Proceed as Pro Se Counsel (Form 11) and provided that Petition to the Court on _____.

c. I have been advised of the nature of the charges and statutory offenses included in the charges against me, the maximum sentence permitted, (text deleted) and other relevant facts so that I understand the advantages and disadvantages of waiving my right to an attorney.

d. Knowing the consequences of giving up my right to counsel, I waive my right to be represented by an attorney during the entry of my guilty plea.

V. Rule 26.03, subd. 13

Option 1:

(4) Notice to Remove. The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove the judge assigned to **a trial or a hearing (remaining text deleted)**. The notice shall be served and filed within seven (7) days after the party receives written notice, or oral notice in court on the record, of which judge is to preside at the trial, ~~or hearing or other proceeding~~, but not earlier than seven (7) days after the appointment or appearance of counsel in the proceedings or the waiver of counsel by the defendant under Rule 5.02 and in any event not later than the commencement of the trial or hearing proceeding for which the removal is requested. **(text deleted) Once the notice to remove is served and filed, the court administrator, with the advice of the judge who is the subject of the notice to remove, will notify the chief judge, who will make the final determination regarding reassignment, if necessary.** No notice to remove shall be effective against a judge who has already presided at the trial, ~~Omnibus Hearing, or other~~ an evidentiary hearing or trial of which the party had notice excluding hearings under Rule 5 and Rule 8, except upon an affirmative showing of cause on the part of the judge. After a party has once disqualified a ~~presiding~~ judge as a matter of right, that party may disqualify ~~the~~ a substitute judge only upon an affirmative showing of cause.

Additionally, If the Supreme Court accepts the language "any proceedings under these Rules", we propose adding the following sentence: *Proceeding does not mean signing a criminal complaint, search warrant, pen register or telephone trap, or presiding over Rule 5 and Rule 8 hearings.*

DISTRICT COURT OF MINNESOTA

SIXTH JUDICIAL DISTRICT
1810 TWELFTH AVENUE EAST
HIBBING, MINNESOTA 55746-1680



CHAMBERS OF
JEFFRY S. RANTALA
JUDGE

*8/13 Copies to
Supreme Court
Fred Gitter
Dike Johnson*

August 11, 1998

Chief Justice Kathleen Blatz
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Change to Rules of Criminal Procedure 5.02, Subd. 1 (3)

Dear Chief Justice Blatz:

I would share in the concerns set forth by Judge Metzen in her letter to you of July 21, 1998. I would further state that not only is this proposed change totally unworkable because of time restraints but, further, the mandate of the rule is impossible to perform in many circumstances.

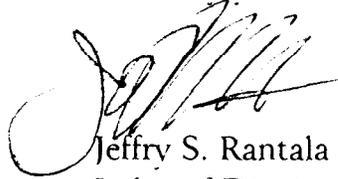
Prior to my appointment to the bench in 1991 I had substantial experience in the area of criminal defense before the District Court. The requirements being proposed for the trial bench are the same requirements that are expected of criminal defense counsel. Anyone who has practiced in the area will tell you that it is impossible to fully explore or otherwise have knowledge of possible defenses, mitigating circumstances and other factors concerning the quality of the case without a full and complete discovery, an interview with the client, and on occasion a separate investigation. At best, the trial court has a short case report attached to a complaint or tab charge. At worst, there is no information at all.

By ratifying the proposed rule change the trial bench would, in essence, be required to give effective assistance of counsel in circumstances where they do not have the time and probably would not have access to the information.

Chief Justice Blatz
August 11, 1998
Page 2

The proposed rule change is totally unworkable and I would support Judge Metzen's request to reject the changes proposed. If you have any questions concerning any of the issues I have raised, I would be more than happy to discuss it at your convenience. Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Rantala', written over the typed name.

Jeffrey S. Rantala
Judge of District Court

cc: Honorable Leslie M. Metzen
Honorable John C. Oswald
Honorable Gary J. Pagliaccetti