STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

ORDER PROMULGATING AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure has recommended amendments to the Rules of Criminal Procedure to facilitate the transition by the judicial branch to a more universal electronic environment. Specifically, the committee recommends amendments to the rules to permit and eventually require electronic filing of charging documents; incorporate provisions from the General Rules of Practice for the District Courts for electronic filing and service; permit the use of other electronic processes, including signatures, and permit the use of sworn statements; clarify the timing of certain events at omnibus hearings, specifically the procedures set out in Rules 11.07 and 11.09; and, incorporate terms commonly used in an electronic environment.

In an order filed January 2, 2015, the court provided a public comment period on the proposed amendments to the Rules of Criminal Procedure. The court also scheduled a public hearing on March 17, 2015 to consider issues related to public access to judicial branch case records that might be presented by the amendments recommended to these rules. Written comments were received regarding the amendments recommended to Rules 11.07 and 11.09.

The court has carefully considered the committee's recommendations and the written comments. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective as of July 1, 2015. The rules as amended shall apply to all cases pending on or filed on or after the effective date.

2. The inclusion of committee comments and amendments to the comments is for convenience and does not reflect court approval of the comments or the amendments to the comments.

3. The Criminal Rules Committee shall continue to serve and monitor the rules and these amendments during the expansion of electronic filing and electronic service in the district courts, and by April 1, 2016, report to the court concerning any further amendments to the rules that may be recommended by the committee.

Dated: April 22, 2015

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8049

MEMORANDUM

PER CURIAM.

In July 2014, we directed the Advisory Committee on the Rules of Criminal Procedure to consider whether amendments to the rules were needed to accommodate the transition by the judicial branch to a more universal electronic environment. The committee met several times in 2014, and on December 19, 2014, filed a report with recommendations for amendments to a number of rules. These recommended amendments: (a) permit and eventually require electronic filing of charging documents as well as clarify the use of tab charges; (b) incorporate into several rules the provisions of Rule 14 of the General Rules of Practice for the District Courts, which governs electronic filing and service; (c) permit the use of electronic signatures, electronic processes for obtaining search warrants, and sworn statements under penalty of perjury; (d) clarify the timing of certain events at omnibus hearings, specifically the procedures set out in Rules 11.07 and 11.09 for decision and a speedy trial demand; and, (e) substitute terms commonly used in an electronic environment, such as deleting "paper" in favor of "document."

The court provided a 60-day public comment period. The Minnesota State Bar Association submitted written comments regarding the proposed amendments to Rules 11.07 and 11.09.

First, the MSBA objected to the recommended amendment to extend the time for decision on omnibus issues, *see* Minn. R. Crim. P. 11.07, arguing that an extended decision time represents a delay in the adjudication of justice for both the defendant and the prosecutor. Rather than the 30-day deadline recommended by the committee, the MSBA proposed a 14-day deadline for decision.

The deadline for decision of omnibus issues has been 7 days. When a period of time prescribed or allowed is 7 days or fewer, intervening Saturdays, Sundays, and legal holidays are excluded from the 7-day period in accordance with Minn. R. Crim. P. 34.01. Thus, depending on the number of intervening excluded days, the 7-day period may be as long as 12 days. The committee received comments from some judges that the 7-day deadline was unreasonable in many cases. The court agrees that an appropriate balance must be achieved between the need for adequate judicial consideration and decision-making, and the goal of prompt adjudication of justice. While the MSBA's proposed 14-day deadline offers more time than the rule currently provides, it is not clear that those few extra days will serve the need for adequate judicial consideration and decision making. Therefore, while we encourage judges to resolve omnibus issues as expeditiously as possible, we adopt the committee's recommendation to amend Rule 11.07 to allow 30 days for decision.

Second, the MSBA proposed alternative language for Rule 11.09 based on an assumption that the committee's recommendation would allow the 60-day period for a speedy trial demand to run from entry of a plea other than guilty, rather than from the date of the speedy trial demand. The MSBA misunderstands the committee's

recommendation. The committee's recommended amendment is intended to clarify an ambiguity that arose after a 2009 stylistic amendment to Rule 11.09 that replaced the language "the time period shall not begin to run earlier than the date of the plea other than guilty," with "the time period begins on the date of the plea other than guilty." The committee's proposed amendment clarifies that the 60-day period runs from the date of a speedy trial demand that is made after entry of a plea other than guilty. Because the MSBA's proposed alternative language does not achieve the same clarifying effect, we adopt the amendment to Rule 11.09 as recommended by the committee.

The remaining amendments recommended by the committee are adopted. In addition, the court has amended Rule 34.01 for consistency with other court rules that address computation of time periods in the event of a closure of court facilities or the unavailability of court-authorized e-filing and e-service systems.

We appreciate the thorough and thoughtful work of the committee in completing its work in the time frame established to allow for implementation of e-file and e-service as recommended by the eCourtMN Steering Committee.

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

1. Amend Rule 1.04(c) as follows:

(c) Tab Charge. A "tab charge" is a ~~brief statement of the charge~~charging document filed by an officer at a place of detention, or an amendment of the charges on the record by the prosecutor, ~~entered in the record by the court administrator~~ that includes a reference to the statute, rule, regulation, ordinance, or other provision of law the defendant is alleged to have violated. A tab charge is not synonymous with "citation" as defined in paragraph (e).

2. Amend Rule 1.04(e) as follows:

(e) Citation. A "citation" is a charging document issued under Rule 6~~.~~ ~~The citation may be~~ filed in paper form or by electronic means.

3. Amend Rule 1.04(f) as follows:

(f) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.~~Electronic Citation. An "electronic citation" is a citation transmitted to the court by electronic means.~~

4. Amend Rule 1.06 as follows:

Rule 1.06. Use of Electronic Filing for Charging Documents

Subd. 1. Definitions~~.~~ of E-filing.

~~(1) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.~~

~~(2) E-filing.~~ "E-filing" for purposes of this rule means~~is~~ the electronic transmission of the charging document to the court administrator by means authorized by the State Court Administrator.

Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document ~~except an indictment~~. Effective July 1, 2015, in Cass, Clay, Cook, Dakota, Faribault, Hennepin, Kandiyohi, Lake, Morrison, Ramsey, and Washington Counties, e-filing must be used to file all complaints. Effective July 1, 2016, e-filing must be used to file all citations, tab charges, and complaints statewide.

Subd. 3. Signatures.

(1) How Made. If the charging document is e-filed, all signatures required under these rules must be affixed electronically. ~~Any individual required to sign the charging document under these rules can choose to print the charging document and sign manually.~~ If the e-filing technology is unavailable, ~~Once~~ any individual required to sign the charging document may print~~prints~~ the charging document and affix~~affixes~~ a manual signature.~~,~~ If the document is printed and manually signed, all subsequent signatures must be affixed manually, and the printed copy ~~is the original and~~ must be filed with the court.

(2) Signature Standard. ~~Each signature affixed electronically must comply with the electronic signature standard approved by the State Court Administrator, except that electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification.~~Electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification. Other electronic signatures may be affixed by any electronic means.

(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.

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

Subd. 5. Paper Submission. E-filed charging documents are in lieu of paper submissions. An e-filed charging document should not be transmitted to the court administrator by any other means ~~unless the court requests a printed copy~~. Paper submission is authorized in lieu of e-filing where the electronic means authorized by the State Court Administrator are unavailable to the submitting agency.

5. Amend the Comments to Rule 1, paragraph 7, as follows:

It is anticipated that if a complaint is commenced electronically, and the technology becomes unavailable due to a system failure, any actor in the chain (e.g., prosecutor or judge) may need to ~~could choose to~~ print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint

are valid so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2). It is also anticipated that certain complaints, including complaints filed by a prosecutor from a county other than the county of venue in a conflict case and complaints and charges filed by agencies without a federal Originating Agency Identification (ORI) number, must be filed on paper for the foreseeable future because the current e-filing system does not support electronic filing of those documents. The current e-filing system used for filing charging documents also does not support the creation and filing of an indictment; however, if a criminal case has already been initiated by the filing of a complaint, an indictment may be filed into that case by the prosecutor using the E-Filing system defined in Minnesota General Rules of Practice 14.

6. Amend Rule 2.01, subd. 1, as follows:

Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, except as modified by Rules 6.01, subd. 4, 11.08, and 15.08. The probable cause statement can be supplemented by supporting affidavits, statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.

7. Amend Rule 2.01, subd. 2, as follows:

Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, except as otherwise provided in Rules 11.08 and 15.08, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. If sworn witness testimony is taken under subdivision 3, the oath must be administered by a judge, but the oath may be administered by telephone, ITV, or similar device.

8. Amend the Comments to Rule 2, paragraph 2, as follows:

Even if affidavits, testimony, or other reports supplement the complaint, the complaint must still include a statement of the facts establishing probable cause. Under this rule, the complaint and any supporting affidavits can be sworn to before a court administrator or notary public, or signed under penalty of perjury pursuant to Minn. Stat. § 358.116. The documents can then be submitted to the judge or judicial officer by any method permitted under the rule and the law enforcement officer or other complainant need not personally appear before the judge. However, if sworn oral testimony is taken to supplement the complaint, it

must be taken before the judge and cannot be taken before a court administrator or notary public.

9. Amend Rule 3.01 as follows:

Rule 3.01. Issuance

If the facts in the complaint and any supporting ~~affidavits~~documents or supplemental sworn testimony establish probable cause to believe an offense has been committed and the defendant committed it, a summons or warrant must issue. A summons rather than a warrant must issue unless a substantial likelihood exists that the defendant will fail to respond to a summons, the defendant's location is not reasonably discoverable, or the defendant's arrest is necessary to prevent imminent harm to anyone. A warrant for the defendant's arrest must be issued to any person authorized by law to execute it.

The warrant or summons must be issued by a judge of the district court. If the offense is punishable by fine only, a court administrator may issue the summons when authorized by court order.

A summons must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.

A judge must issue a summons whenever requested to do so by the prosecutor. If a defendant fails to appear in response to a summons, a warrant must issue.

10. Amend Rule 3.02, subd. 1, as follows:

Subd. 1. Warrant. The warrant must be signed by a judge and must contain the name of the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It must describe the offense charged in the complaint. The warrant and complaint may be combined in one form. For all offenses, the amount of bail must be set, and other conditions of release may be set, by a judge and ~~endorsed~~stated on the warrant.

11. Amend Rule 3.03, subd. 1, as follows:

Subd. 1. By Whom. The warrant must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail or electronic means, it may also be served by the court administrator.

12. Amend Rule 3.03, subd. 3, as follows:

Subd. 3. Manner. A warrant is executed by the defendant's arrest. If the offense charged is a misdemeanor, the defendant must not be arrested on Sunday or, on any other day of the week, between the hours of 10:00 p.m. and 8:00 a.m. except, when exigent circumstances exist, by direction of the judge, stated on the warrant. A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession when the arrest occurs, but must inform the defendant of the warrant's existence and of the charge.

The summons must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of abode with a person of suitable age and discretion residing there, or by mailing it to the defendant's last known address, or by serving it electronically as authorized by Rule 14 of the General Rules of Practice for the District Courts. A summons directed to a corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.

13. Amend Rule 3.03, subd. 4, as follows:

Subd. 4. Certification; Unexecuted Warrant or Summons. The officer executing the warrant must certify the execution to the court before which the defendant is brought.

On or before the date set for appearance, the officer ~~or clerk of court~~ to whom a summons was delivered for service must certify its service to the court before which the defendant was summoned to appear.

At the prosecutor's request, an unexecuted warrant~~,~~ or an unserved summons~~, or a duplicate~~ may be delivered by a judge to any authorized officer or person for execution or service.

14. Amend Rule 4.02, subd. 2, as follows:

Subd. 2. Citation or Tab Charge. The arresting officer or the officer's superior may issue a citation or tab charge and release the arrested person, and must ~~do so~~release the arrested person if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred. The arresting officer or the officer's superior may issue a citation or tab charge and continue to detain the arrested person if any of the circumstances in Rule 6.01, subd. 1(a)(1)-(3) exist.

15. Amend Rule 4.02, subd. 5, as follows:

Subd. 5. Appearance Before Judge.

(1) Before Whom and When. An arrested person who is not released ~~under this rule or Rule 6,~~ must be brought before the nearest available judge of the county where the alleged offense occurred. The defendant must be brought before a judge without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon as a judge is available. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting ~~affidavits~~documents or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released, the complaint and any supporting ~~papers~~documents must not be filed, and no record made of the proceedings.

(3) Complaint, ~~or~~ Tab Charge, or Citation; Misdemeanors; Designated Gross Misdemeanors. If no complaint is 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 offenses designated under Rule 1.04(b), a citation or tab charge must be filed~~the court administrator must enter upon the records a tab charge, as defined in Rule 1.04(c) of these rules~~. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge or citation, the complaint must be 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 appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02 ~~and may include service by U.S. mail~~.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged, and the complaint and any supporting ~~papers~~documents must not be filed~~, and no record will be made of the proceedings~~.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting ~~affidavits~~documents or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

16. Amend Rule 4.03, subd. 2, as follows:

Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, must be submitted under oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The oath may be administered by the court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device. Any oral testimony must be recorded by reporter or recording instrument and must be retained by the court or by the judge's designee.

The person requesting a probable cause determination must advise the reviewing judge of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.

17. Amend the Comments to Rule 4, paragraph 4, as follows:

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit, under penalty of perjury, or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules.

18. Amend Rule 5.01(c) as follows:

(c) The court must ensure the defendant has a copy of the charging document ~~complaint, citation, or written tab charge~~.

19. Amend Rule 6.01, subd. 1, as follows:

Subd. 1. Mandatory Citation Issuance in Misdemeanor Cases.

(a) By Arresting Officer. In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:

(1) the person must be detained to prevent bodily injury to that person or another;

(2) further criminal conduct will occur; or

(3) a substantial likelihood exists that the person will not respond to a citation.

If the officer has already arrested the person, a citation must issue ~~in lieu of continued detention,~~ and the person must be released, unless any of the circumstances in subd. 1(a)(1)-(3) above exist. If any of the circumstances in subd. 1(a)(1)-(3) above exist, the officer may issue a citation or tab charge and detain the person until the appearance before a judge under Rule 4.02, subdivision 5(3), or until bail is posted pursuant to the district court bail process or schedule.

(b) At Place of Detention. When an officer brings a person arrested without a warrant for a misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff must issue a citation ~~in lieu of continued detention~~and release the person unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist. If any of the circumstances in subd. 1(a)(1)-(3) above exist, a citation or tab charge may be issued and the person may be detained until the appearance before a judge under Rule 4.02, subdivision 5(3), or until bail is posted pursuant to the district court bail process or schedule.

(c) Offenses Not Punishable by Incarceration. A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention.

(d) Reporting Requirements. If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.

20. Amend Rule 6.01, subd. 4(b), as follows:

(b) Notices Regarding Failure to Appear. The citation must state that failure to appear or contact the court or violations bureau as directed may result in the issuance of a warrant. A summons or warrant issued after failure to respond to a citation may be based on ~~sworn~~ facts establishing probable cause contained in or with the citation and attached to the complaint.

The citation must contain notice regarding failure to appear when the offense is a petty misdemeanor as required in Minnesota Statutes, sections 169.99, subd. 1(b), and 609.491, subd. 1.

21. Amend Rule 7.01(d) as follows:

(d) Written notice may be served:

(1) personally on the defendant or defense counsel;

(2) by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there;

(3) by ordinary mail sent to defense counsel's business address or left at this address with a person of suitable age and discretion working there; or

(4) by electronic means ~~if~~ as authorized or required by Rule 14 of the General Rules of Practice for the District Courts ~~Minnesota Supreme Court Order and if service is made in accordance with that order~~.

22. Delete the last paragraph in the Comments to Rule 7 as follows:

~~*Rule 7.01 (d)(4) is a new rule to provide for service by electronic means, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in certain pilot districts, but is designed to be a model for the implementation of electronic filing if the pilot project is made permanent and statewide. The rule makes service by electronic means effective in accordance with the rule for the pilot project.*~~

23. Amend Rule 9.03, subd. 6, as follows:

Subd. 6. In Camera Proceedings. On any party's motion, with notice to the other parties, the court for good cause may order a discovery motion to be made in camera. A record must be made. If the court orders an in camera hearing, the entire record of the motion must be sealed and preserved in the court's records, and be available to reviewing courts. Any materials submitted to the court for in camera review must be submitted in accordance with Rule 14.06 of the General Rules of Practice for the District Courts.

24. Amend Rule 9.03, subd. 10, as follows:

Subd. 10. Reproduction. When an obligation exists to permit reproduction of a report, statement, document, or other tangible thing discoverable under this rule, it may be satisfied by any method that provides an exact reproduction, including ~~e-mail, facsimile, or similar method if~~any electronic means available to both parties.

25. Amend Rule 9.04 as follows:

Rule 9.04. Discovery in Misdemeanor Cases

In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

Upon request, the prosecutor must also disclose any material or information within the prosecutor's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including ~~e-mail, facsimile, or similar method if~~ any electronic means available to both parties.

26. Amend Rule 10.01, subd. 1, as follows:

Subd. 1. Pleadings. The pleadings consist of the ~~indictment, complaint, or tab charge~~charging document and any plea permitted by Rule 14.

27. Amend Rule 10.03, subd. 1, as follows:

Subd. 1. Service. In felony and gross misdemeanor cases, motions must be made in writing and served upon opposing counsel no later than 3 days before the Omnibus Hearing unless the court for good cause permits the motion to be made and served later.

In misdemeanor cases, except as permitted in subdivision 2, motions must be made in writing and served – along with any supporting ~~affidavits~~documents – on opposing counsel at least 3 days before the hearing and no more than 30 days after the arraignment unless the court for good cause permits the motion to be made and served later.

28. Amend the Comments to Rule 10, paragraph 2, as follows:

As a general rule, under Rule 10.02 no challenge to the court's personal jurisdiction can be made in a misdemeanor case until after a complaint has been filed. Therefore, a defendant ~~who has been tab charged~~ must first demand a complaint under Rule 4.02, subd. 5(3) before raising the jurisdictional challenge. If no complaint is issued, the charge must be dismissed under Rule 4.02, subd. 5(3). If a complaint is issued, it will often make any possible challenge moot, since a valid complaint would give the court jurisdiction even if the arrest was illegal. See City of St. Paul v. Webb, 256 Minn. 210, 97 N.W.2d 638 (1959). Once the complaint is issued, the jurisdictional challenge becomes a sufficiency of the complaint question.

29. Amend Rule 11.04, subd. 1, as follows:

Subd. 1. Probable Cause Motions.

(a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) The prosecutor and defendant may offer evidence at the probable cause hearing.

(c) The court may find probable cause ~~on the face of~~based on the complaint or the entire record, including reliable hearsay. Evidence considered on the issue of probable cause is subject to the requirements of Rule 18.05, subd. 1.

30. Amend Rule 11.07 as follows:

Rule 11.07. Determination of Issues

The court must make findings and determinations on the omnibus issue(s) in writing or on the record within ~~7~~30 ~~business~~ days of the ~~Omnibus Hearing~~issue(s) being taken under advisement.

31. Amend Rule 11.09 as follows:

Rule 11.09. Trial Date

(a) If the defendant enters a plea other than guilty, a trial date must be set.

(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days ~~of the demand~~ unless the court finds good cause for a later trial date. ~~The time period begins on the date of the plea other than guilty.~~

Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

32. Amend Rule 11.10 as follows:

Rule 11.10. Record

Subd. 1. Record. A verbatim record must be made.

Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:

(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient ~~affidavit~~showing of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The transcript must be provided to the prosecutor without prepayment.

(c) Transcripts provided to counsel must be filed with the court.

(d) A party offering video or audio evidence may also provide a transcript of the exhibit, which becomes part of the record.

Subd. 3. ~~Papers~~Documents and Exhibits. All ~~papers~~documents and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.

33. Amend Rule 15.07 as follows:

Rule 15.07. Plea to Lesser Offenses

With the prosecutor's consent and the court's approval, the defendant may plead guilty to a lesser included offense or to an offense of lesser degree. On the defendant's motion and after hearing, the court, without the prosecutor's consent, may accept a guilty plea to a lesser included offense or to an offense of lesser degree, provided the court is satisfied that the prosecutor cannot introduce sufficient evidence to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the ~~indictment, complaint or tab charge~~charging document. However, in felony cases, if the indictment or complaint is not amended, the reduction of the charge to an included offense or an offense of lesser degree must be done ~~in writing or~~ on the record. If done only on the record, the proceedings must be transcribed and filed.

34. Amend Rule 15.08 as follows:

Rule 15.08. Plea to Different Offense

With the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original ~~tab charge, indictment, or complaint~~charging document. If the different offense is a felony or gross misdemeanor, a new complaint must be signed by the prosecutor and filed in the district court. The complaint must be in the form prescribed by Rule 2.01 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged with the new offense by complaint ~~or tab charge~~, or on the record~~, as provided in Rule 4.02, subd. 5(3)~~, and the original charge must be dismissed.

35. Amend Rule 17.03, subd. 1, as follows:

Subd. 1. Joinder of Offenses. When the defendant's conduct constitutes more than one offense, each offense may be charged in the same ~~indictment or complaint~~charging document in a separate count.

36. Amend Rule 17.03, subd. 4, as follows:

Subd. 4. Consolidation of ~~Indictments, Complaints or Tab Charges~~Charging Documents for Trial.

(a) The court, on the prosecutor's motion, or on its initiative, may order two or more ~~indictments, complaints, tab charges, or any combination thereof~~ charging documents to be tried together if the offenses and the defendants could have been joined in a single ~~indictment, complaint, or tab charge~~charging document.

(b) On a defendant's motion, the court may order two or more ~~indictments, complaints, tab charges, or any combination of them~~ charging documents to be tried together even if the offenses and the defendants could not have been joined in a single ~~indictment, complaint, or tab charge~~charging document.

(c) In all cases, the procedure will be the same as if the prosecution were under a single ~~indictment, complaint, or tab charge~~charging document.

37. Amend Rule 17.04 as follows:

Rule 17.04. Surplusage

The court on motion may strike surplusage from the ~~indictment, complaint, or tab charge~~charging document.

38. Amend Rule 17.06 as follows:

Rule 17.06. Motions Attacking ~~Indictment, Complaint or Tab Charge~~the Charging Document

Subd. 1. Defects in Form. No ~~indictment, complaint, or tab charge~~charging document will be dismissed nor will the trial, judgment, or other proceedings be affected by reason of a defect or imperfection in matters of form that does not prejudice the defendant's substantial rights.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to ~~an indictment, complaint, or tab charge~~the charging document must be made by motion under Rule 10.01, subd. 2 and may be based on the following grounds without limit:

(1) With regard to an indictment:

(a) The evidence admissible before the grand jury was not sufficient to establish an offense charged or any lesser or other included offense;

(b) The grand jury was illegally constituted;

(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;

(d) Fewer than 12 grand jurors concurred in the finding of the indictment;

(e) The indictment was not found or returned as required by law; or

(f) An unauthorized person was in the grand jury room during the presentation of evidence on the charge contained in the indictment, or during the grand jury's deliberations or voting.

(2) With regard to ~~an indictment, complaint, or tab charge~~any charging document:

(a) The ~~indictment, complaint or tab charge~~charging document does not substantially comply with the requirements prescribed by law to the prejudice of the defendant's substantial rights;

(b) The court lacks jurisdiction over the offense charged;

(c) The law defining the offense charged is unconstitutional or otherwise invalid;

(d) In the case of an indictment or complaint, the facts stated do not constitute an offense;

(e) The prosecution is barred by the statute of limitations;

(f) The defendant has been denied a speedy trial;

(g) There exists some other jurisdictional or legal impediment to the defendant's prosecution or conviction for the offense charged, unless provided by Rule 10.02, or

(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat. § 609.035.

Subd. 3. Time for Motion. A motion to dismiss the ~~indictment, complaint, or tab charge~~charging document must be made within the time prescribed by Rule 10.03, subd. 1. At any time during the pendency of a proceeding an objection may be made to the court's jurisdiction over the offense or that the ~~indictment, complaint or tab charge~~charging document fails to charge an offense.

Subd. 4. Effect of Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the ~~indictment, complaint, or tab charge~~charging document, the defendant must be permitted to plead if the defendant has not previously entered a plea. A plea previously entered will stand. In all cases, the defendant may continue to raise the issues on appeal if convicted after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss ~~an indictment, complaint or tab charge~~a charging document for a defect in the institution of prosecution or in the ~~indictment, complaint, or tab charge~~charging document, the court must specify the grounds on which the motion is granted.

(3) Dismissal for Curable Defect. If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3), or for a defect that could be cured or avoided by an amended or new indictment or complaint, further prosecution for the same offense will not be barred. On the prosecutor's motion made within 7 days after notice of the order granting the motion to dismiss, the court must order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that may be required under Rule 6.02, subd. 1, the defendant must be released subject to such non-monetary conditions as the court deems appropriate. The specified time for such amended or new indictment or complaint must not exceed 60 days for filing a new indictment or 7 days for amending an indictment or complaint or for filing a new complaint. During the 7-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or complaint's dismissal must be stayed. If the prosecutor does not make the motion within the 7-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified, the defendant must be discharged and further prosecution for the same offense is barred unless the prosecutor has appealed as provided by law, or the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor and designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will not be barred unless the court has so ordered.

39. Amend the Comments to Rule 17, paragraph 10, as follows:

By Rule 10.03, subd. 1, a motion to dismiss an indictment or complaint must be served no later than 3 days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases, by Rule 17.06, subd. 3, a motion to dismiss ~~a complaint or tab charge~~ must be served at least 3 days before the pretrial conference or, at least 3 days before the trial if no pretrial conference is held, unless this time is extended for good cause.

40. Amend Rule 18.05, subd. 1, as follows:

Subd. 1. Admissibility of Evidence. An indictment must be based on evidence that would be admissible at trial, with these exceptions:

(1) Hearsay evidence offered only to lay the foundation for the admissibility of otherwise admissible evidence if admissible foundation evidence is available and will be offered at the trial.

(2) A report by a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant, when certified by the person as the person's report.

(3) Unauthenticated copies of official records if authenticated copies will be available at trial.

(4) Written ~~sworn~~ statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of the persons who claim to have title or an interest in property to prove ownership or that the property was obtained without the owner's consent, and written ~~sworn~~ statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of these persons or of experts to prove the value of the property, if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.

(5) Written ~~sworn~~ statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts contained in the statements.

(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents that they have examined but that are not produced at the hearing or were not previously submitted to defense counsel for examination, if the documents and summaries would otherwise be admissible. A police officer in charge of the investigation may give an oral summary.

41. Amend Rule 19.03, subd. 1, as follows:

Subd. 1. By Whom. **A**ny officer authorized by law may execute the warrant, and if authorized may also serve the summons. The court administrator may serve the summons in any manner authorized by subdivision 3 of this rule ~~by mail~~.

42. Amend Rule 20.01, subd. 4(b), as follows:

(b) Report of Examination. The court-appointed examiner must forward a written report to the ~~judge who ordered the examination~~court. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report must not be otherwise disclosed until the competency hearing. The report must include:

(1) A diagnosis of the defendant's mental condition.

(2) If the defendant is mentally ill or deficient, an opinion as to:

(a) the defendant's capacity to understand the proceedings or participate in the defense;

(b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;

(c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;

(d) whether a substantial probability exists that the defendant will ever attain competency to proceed;

(e) the estimated time required to attain competency to proceed; and

(f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.

(3) The factual basis for the diagnosis and opinions.

(4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or deficiency.

43. Amend Rule 20.03, subd. 1, as follows:

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or deficiency, the court, on the prosecutor's motion with notice to defense counsel,

may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or deficiency defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

44. Amend Rule 21.01 as follows:

Rule 21.01. When Taken

The court may order that the testimony of a witness be taken by oral deposition before any person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:

(a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1;

(b) ~~the prosecutor has filed a complaint or indictment, or a tab charge has been entered~~a charging document has been filed; and

(c) the requesting party has filed a motion and provided notice of the motion to the parties.

The order must also direct the defendant's presence at the deposition, and if the defendant is disabled in communication, direct the presence of a qualified interpreter.

45. Amend Rule 21.05 as follows:

Rule 21.05. Transcription, Certification and Filing

When the testimony is transcribed, the person who took the deposition must certify that the witness was duly sworn and that the deposition is a verbatim record of the witness's testimony. The person must then ~~securely seal the deposition in an envelope endorsed with~~secure the deposition, noting the title of the case and ~~marked~~ "Deposition of (here insert name of witness)." The person must promptly file ~~it~~the deposition under seal with the court~~, or send it by registered or certified mail to the court administrator for filing~~. The deposition must not be unsealed or disclosed except by court order.

On a party's request, documents and other things produced during the examination of a witness, or copies of them, must be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party.

If the person producing the exhibits requests their return, the person taking the deposition must mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used as if annexed to the deposition.

46. Amend Rule 23.05, subd. 4, as follows:

Subd. 4. Failure to Appear. If a defendant charged with a petty misdemeanor, or a misdemeanor on the Statewide Payables List that is certified as a petty misdemeanor, fails to appear or respond as directed on the citation, ~~or~~ complaint, or by the court, a guilty plea and conviction may be entered, the payable fine amount no greater than the maximum fine for a petty misdemeanor, and any applicable fees and surcharges may be imposed, and the matter referred to collections. Conviction must not be entered until 10 days after the failure to appear.

47. Amend Rule 24.02 by adding a new subdivision 19 as follows:

Subd. 19. Perjury. Violations of Minn. Stat. § 609.48 based on a statement signed under penalty of perjury pursuant to Minn. Stat. § 358.116 may be prosecuted in the county where the statement was signed, or the county of the district court in which the statement was filed.

48. Amend Rule 24.03, subd. 4, as follows:

Subd. 4. Proceedings on Transfer. If the case is transferred under these rules, all records in the case~~, or certified copies of them,~~ must be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that the defendant be transported to the sheriff of the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case must be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release, those conditions must be continued on the further condition that the defendant must appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

49. Amend Rule 25.02, subd. 2, as follows:

Subd. 2. Methods of Proof. The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:

(a) Testimony, ~~or~~ affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, from individuals in the community;

(b) Qualified public opinion surveys; or

(c) Other material having probative value.

Testimony, ~~or~~ affidavits, or written statements from individuals in the community must not be required as a condition for granting the motion.

50. Amend Rule 25.02, subd. 4, as follows:

Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion must be determined before the jury is sworn. A motion for reconsideration of a prior denial may be granted even after a jury has been sworn.

51. Amend Rule 26.04 as follows:

Rule 26.04. Post-Verdict Motions

Subd. 1. New Trial On Defendant's Motion.

(1) Grounds. The court may – on written motion of a defendant – grant a new trial on the issue of guilt or the existence of facts to support an aggravated sentence, or both, on any of the following grounds:

1. The interests of justice;

2. Irregularity in the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial;

3. Prosecutorial or jury misconduct;

4. Accident or surprise that could not have been prevented by ordinary prudence;

5. Newly discovered material evidence, which with reasonable diligence could not have been found and produced at the trial;

6. Errors of law at trial, and objected to at the time unless no objection is required by these rules;

7. A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.

(2) Basis of Motion. A motion for new trial must be based on the record. Pertinent facts that are not in the record may be submitted by affidavit, or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, except as otherwise provided by these rules. A full or partial transcript or other verbatim recording of the testimony taken at trial may be used during the motion hearing.

(3) Time for Motion. Notice of a motion for a new trial must be served within 15 days after a verdict or finding of guilty. The motion must be heard within 30 days after the verdict or finding of guilty, unless the time for hearing is extended by the court for good cause within the 30-day period.

(4) Time for Serving ~~Affidavits~~Supporting Documents. If a motion for a new trial is based on affidavits or signed statements, the ~~affidavits~~documents must be served with the notice of motion. The opposing party will then have 10 days to serve ~~affidavits~~supporting documents. The 10-day period may be extended by the court for good cause. The court may permit reply ~~affidavits~~documents.

Subd. 2. New Trial on Court's Initiative. The court may – on its own initiative and with the consent of the defendant – order a new trial on any of the grounds specified in subdivision 1(1) within 15 days after a verdict or finding of guilty.

Subd. 3. Motion to Vacate Judgment. The court must – on motion of a defendant – vacate judgment, if entered, and dismiss the case if the ~~indictment, complaint, or tab charge~~charging document does not charge an offense, or if the court did not have jurisdiction over the offense charged. The motion must be made within 15 days after a verdict or finding of guilty, after a plea of guilty, or within a time set by the court during the 15-day period. If the motion is granted, the court must make written findings specifying its reasons for vacating the judgment and dismissing the case.

52. Amend Rule 27.03, subd. 1(B)(4), as follows:

(4) The presentence investigation report, if ordered, must conform to Minn. Stat. § 609.115, subd. 1, and include a sentencing guidelines worksheet and any other information the court ordered included. ~~The report must be submitted in triplicate.~~

53. Amend Rule 27.03, subd. 1(B)(5), as follows:

(5) The court, or the probation officer at the court's direction, must forward the guidelines worksheet and the ~~nonconfidential portion of the~~ presentence

investigation report to the parties. ~~except as limited by Minn. Stat. § 609.115, subd. 4. The confidential information section of the presentence investigation need not be forwarded, but counsel for the parties must be told it is available for inspection.~~ Confidential sources of information must not be included in the presentence investigation report unless the court otherwise directs. The presentence investigation report must not be disclosed to the public without a court order.

54. Amend Rule 27.04, subd. 1(1), as follows:

(1) Warrant or Summons.

(a) Probation revocation proceedings must be initiated by a summons or warrant based on a written report, signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, showing probable cause to believe a probationer violated probation.

(b) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another. If the probationer fails to appear on the summons, the court may issue a warrant.

55. Amend Rule 27.05, subd. 4(3), as follows:

(3) Issuance of Warrant or Summons. The court may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit, written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or testimony, finds:

(a) probable cause exists to believe the defendant committed a material violation of the agreement; and

(b) a substantial likelihood exists that the defendant will not appear at a termination hearing.

In lieu of a warrant, the court may issue a summons ordering the defendant to appear.

56. Add a new paragraph after paragraph 3 of the Comments to Rule 27 as follows:

Rule 27.03, subd. 1(B)(5), contemplates that the court or the probation officer will provide the parties with a copy of a filed presentence investigation report via electronic transmission or access. Since the advent of the Minnesota Rules of Criminal Procedure, there have been counties in which "confidential

portions" of presentence investigation reports were not forwarded to the parties, and were made available to the parties by in-court inspection only. The 2015 amendment to the rule provides that any presentence investigation report filed with the court must also be forwarded to the parties without separation into "non-confidential" or "confidential" portions, or redaction by the court. If the probation officer has any "confidential sources of information" to disclose (see Minn. Stat. § 609.115, subd. 4), that information must not be contained in the presentence investigation report that is filed with the court, and must be disclosed to the court in a separately filed document or in an in-chambers hearing.

57. Amend Rule 28.03 as follows:

Rule 28.03. Certification of Proceedings

In the following circumstances, when any question of law arises that in the district court's opinion is so important or doubtful that the Court of Appeals should decide it, and the defendant requests or consents, the judge must report the case to present the question of law, and certify the report to the Court of Appeals:

(1) at the trial of any person convicted in any court;

(2) upon any motion to dismiss a charging document~~tab charge, complaint, or indictment~~; or

(3) upon any motion relating to the charging document~~tab charge, complaint, or indictment~~.

Certification stays all proceedings in the district court until the Court of Appeals decides the question presented. The prosecutor must, upon certification of the report, promptly furnish a copy to the Minnesota Attorney General at the expense of the governmental unit responsible for the prosecution.

The court may stay other criminal cases it has pending that involve or depend on the same question, if the defendant so requests or consents to the stay, until the appellate court decides the certified question. Briefs must be filed and served as provided in Rule 28.04, subd. 2(3), unless the appellate court directs otherwise.

58. Amend Rule 32 as follows:

Rule 32. Motions

Requests to the court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing, unless the court or these rules permit it to be made orally. The motion must state the grounds on which it is made and must set forth the relief or order sought. A motion may be supported by

affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

59. Amend Rule 33 as follows:

Rule 33. Service and Filing of ~~Papers~~Documents; Signature

Rule 33.01. Service; Where Required

Written motions – other than those heard ex parte – written notices, and other similar ~~papers~~documents must be served on each party.

Rule 33.02. Service; On Whom Made

Service required or permitted to be made on a represented party under these rules must be made on the attorney unless the court orders personal service on the party. Service on the attorney or party must be made in the manner provided in civil actions, as ordered by the court, or as required by these rules. Except where personal service is required by these rules, service~~Service~~ may be made by electronic means as authorized or required by Rule 14 of the General Rules of Practice for the District Courts~~if authorized by an order of the Minnesota Supreme Court and if service is made in accordance with that order; service by electronic means is complete as provided in that order~~. Service by authorized electronic means through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

Any notices or copies required to be provided under these rules may also be provided electronically as authorized or required by Rule 14 of the Minnesota General Rules of Practice for the District Courts.

Rule 33.03. Notice of Orders

Upon entry of an order~~ made on a written motion subsequent to arraignment~~, the court administrator must promptly ~~mail~~transmit a copy to each party and must make a record of the ~~mailing~~transmission. The court administrator may provide a copy by electronic means as authorized or required by Rule 14 of the Minnesota Rules of General Practice~~if authorized by an order of the Minnesota Supreme Court and if provided in accordance with that order~~. The transmission of the order constitutes the notice of its entry. As long as the order transmitted indicates the date the order was entered, the order need not be accompanied by a separate notice of entry. Lack of notice of entry by the court administrator does

not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, unless these rules direct otherwise.

Rule 33.04. Filing

(a) Search warrants and search warrant applications, affidavits, and inventories – including statements of unsuccessful execution – and ~~papers~~documents required to be served must be filed with the court administrator. ~~Papers~~Documents must be filed as in civil actions, except that when ~~papers~~documents are filed by facsimile transmission, a facsimile filing fee is not required ~~and the originals of the papers described in Rule 33.05 must be filed as Rule 33.05 provides~~. ~~Where authorized by order of the Minnesota Supreme Court, documents may be filed electronically by following the procedures of such order and will be deemed filed in accordance with the provisions of that order~~.

(b) Search warrants and related documents need not be filed until after execution of the search or the expiration of 10 days, unless this rule directs otherwise.

(c) The prosecutor may request that a complaint, indictment, application, arrest warrant, search warrant, supporting ~~affidavits~~documents, and any order granting the request not be filed, or be filed under seal.

(d) An order must be issued granting the request in whole or in part if, from affidavits, written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that: (1) in the case of complaint, indictment, or arrest documents, ~~filing~~making the document public may cause a potential arrestee to flee, hide, or otherwise prevent the execution of the warrant; or, (2) in the case of a search warrant application ~~or affidavit~~, ~~filing~~making the document public may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.

(e) The order must further direct that on execution and return of an arrest warrant, the filing required by paragraph (a) must be complied with immediately and the arrest warrant filed with the court must be made public. For a search warrant, following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting ~~application or affidavit~~documents must be filed either immediately or at any other time as the court directs. If the search warrant was previously filed under seal, ~~Until such filing,~~ the documents and materials ~~ordered withheld from filing~~ must be ~~retained~~

~~by the judge or the judge's designee~~kept under seal until the court directs otherwise.

(f) Except as otherwise specified in these rules, documents may be filed electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Notwithstanding Rule 14 of the Minnesota General Rules of Practice for the District Courts, documents prepared and presented to the court during a court proceeding, including but not limited to a signed guilty plea petition or signed waiver of counsel, are not required to be filed electronically.

(g) Any signature, other than those governed by Rule 1.06, that is required by these rules may be affixed electronically by any electronic means.

Rule 33.05. Facsimile and Electronic Transmission

(a) Facsimile Transmission. Complaints, orders, summons, warrants, and supporting documents – including orders and warrants ~~authorizing the interception of communications~~issued under Minnesota Statutes, Chapter 626A – may be sent via facsimile transmission. ~~The transmission may be by other electronic means if authorized by order of the Minnesota Supreme Court and if provided in accordance with that order. Procedural and statutory requirements for the issuance of a warrant or order must be met, including the making of a record of the proceedings.~~

A facsimile order or warrant issued by the court is valid and enforceable~~has the same force and effect as the original for procedural and statutory purposes. The original order or warrant, along with any supporting documents and affidavits, must be delivered to the court administrator of the county in which the request or application was made. The original of any facsimile transmissions received by the court under this rule must be promptly filed~~.

(b) Electronic Transmission. Search warrants and supporting documents including orders and warrants issued under Minnesota Statutes, Chapter 626A, may be sent and signed electronically under a method approved by the State Court Administrator. Any search warrant signed electronically under a method approved by the State Court Administrator is valid and enforceable.

60. Amend the Comments to Rule 33:

Comment—Rule 33

Minn. R. Civ. P. 5.02 provides the method for service in civil actions.

~~*The amendments to Rule 33 provide for service and filing by electronic means, other than by facsimile as allowed by the existing rule, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in certain pilot districts, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide.*~~

~~*Service by electronic means is allowed for documents served under Rule 33. Personal service or service by mail of documents such as summonses, subpoenas, and warrants is still required under the rules that govern those documents, and electronic service is therefore not an authorized means of service.*~~

Search warrants may be requested by affidavit or by oral testimony, and may be obtained in person and signed on paper, exchanged by facsimile and signed on paper, or exchanged and signed electronically under a method approved by the State Court Administrator. The rules do not require a warrant to be obtained in a particular manner. With the number of variations in how a warrant may be requested, how the documents may be transmitted, and how the signature may be applied, there is no longer what was traditionally considered an "original" warrant in many circumstances. Regardless of the method by which the warrant was obtained, if the warrant was requested and signed under one of the approved processes, the warrant is valid and enforceable.

61. Amend Rule 34.01 as follows:

Time must be computed as follows except as provided by Rules 3.02, subd. 2; 4.02, subd. 5(1); 4.02, subd. 5(3); and 4.03.

The day of the act or event from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, ~~or~~ a legal holiday, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days ~~in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday~~. When a period of time prescribed or allowed is 7 or fewer days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, ~~and~~ any other day appointed as a holiday by the President or the Congress of the United

States or by the State, and a day that the United States Mail does not operate.

62. Amend Rule 34.03 as follows:

Rule 34.03. For Motions; Affidavits; Statements under Penalty of Perjury

A written notice of motion and motion, other than one that may be heard ex parte, must be served at least five days before the time specified for the hearing, unless a rule or court order fixes a different time. For cause, an order fixing a different time may be granted on ex parte application.

When a party supports a motion by affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, the ~~affidavit~~supporting document must be served at least one day before the hearing, unless the court permits it to be served later.

63. Amend Rule 34.04 as follows:

Rule 34.04. Additional Time After Service by Mail or Electronic Service Late in the Day

When a party is served with a notice or other paper by mail, three days must be added to the time the party has the right, or is required, to act. If service is made by electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day must be added to the time the party has the right, or is required, to act.

64. Amend Rule 35 as follows:

Rule 35. Courts and Court Administration

The district courts are deemed open at all times for the purpose of filing any proper ~~paper~~document, issuing and returning or certifying process, and making motions and orders. Unless otherwise ordered, the courts are deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The court administrator's office, with the court administrator or a deputy in attendance, must be open during business hours on all days except Saturdays, Sundays, or legal holidays.

65. Amend Rule 36 as follows:

Rule 36. Search Warrants on Oral Testimony

Rule 36.01. General Rule

A request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge, subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile or electronic transmission, or by other appropriate means.

Rule 36.02. When Request by Oral Testimony Appropriate

An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The judge must make this determination the initial focus of the oral warrant request.

Rule 36.03. Application

The person requesting the warrant must prepare a duplicate original warrant and must read the duplicate original warrant, verbatim, to the judge. The judge must prepare an original warrant by recording, verbatim, what has been read by the applicant. The judge may direct modifications, which must be included on the original and ~~the~~any duplicate original warrant. Alternatively, with the permission of the judge, the warrant may be transmitted to the judge by facsimile or electronic transmission, or by other appropriate means.

Rule 36.04. Testimony Requirements

When the officer informs the judge that the purpose of the communication is to request a search warrant, the judge must:

(1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge, the recording may be done by the applicant for the search warrant, but the tape or other medium used to make the record must be submitted to the issuing judge as soon as practical, and no later than the time for filing in Rule 33.04.

(2) Identify and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.

(3) As soon as is practical after receiving the testimony, the judge must direct that the record of the oral warrant request be transcribed. The judge must certify the accuracy of the transcription. If a longhand verbatim record is made, the judge must sign it.

Rule 36.05. Issuance of Warrant

The judge must order issuance of a warrant if:

(a) the circumstances make it reasonable to dispense with a written affidavit, or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116;

(b) the warrant request conforms with the law; and

(c) probable cause exists for issuance of the warrant.

The judge ~~must~~may order the issuance of a warrant by directing the applicant to sign the judge's name on the duplicate original warrant, and if so, ~~.~~ ~~T~~the judge must immediately sign the original warrant and enter on the face of the original warrant the exact time the judge signed the warrant. Alternatively, the judge may sign the warrant and transmit it to the officer by electronic transmission, or by other appropriate means. The finding of probable cause may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Rule 36.06. Filing

The ~~original warrant, the duplicate original~~ warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents must be filed as Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium must also be filed with the court.

Rule 36.07. Contents of Warrant

The contents of a warrant issued on oral testimony must be the same as the contents of a warrant on affidavit.

Rule 36.08. Execution

The execution of a warrant obtained through oral testimony is subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant must enter the exact time of execution on the face of the ~~duplicate original~~ warrant.