

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

PROMULGATION OF AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE

ORDER

In July 2003, the Conference of Chief Judges (CCJ) requested that the court consider the elimination of mandatory transcripts for felony and gross misdemeanor guilty plea and sentencing hearings. On July 17, 2003, the court requested that the Advisory Committee on Rules of Criminal Procedure comment on the advisability of the proposal and submit proposed rule amendments and forms necessary to effectuate it. On September 18, 2003, the Committee submitted proposed amendments, but expressed strong opposition to their implementation. The court held a public hearing on October 15, 2003, and received numerous written and oral comments on the proposal. For reasons set forth below, the court is eliminating the mandatory transcription of plea and sentencing hearings.

Minnesota Rules of Criminal Procedure 15.09 and 27.03, subd. 6, require that felony and gross misdemeanor guilty plea and sentencing hearings be transcribed within 30 days of sentencing. Despite the mandatory language in these rules, the actual practice of preparing plea and sentencing transcripts varies from district to district, and within each district, from county to county and from judge to judge. According to data submitted by the CCJ, in fiscal year 2003, such transcripts were produced statewide in only 56% of the disposed felony and gross misdemeanor cases. In Ramsey County and

Hennepin County, the state's two largest counties, transcripts were filed in 48% and 52% of the cases, respectively.

It is necessary for the courts and our justice system to have timely, accurate and understandable information about pleas and sentencing. However, in actual practice the mandatory transcript requirement is ineffective to accomplish this purpose. Transcripts prepared in only half of the cases, even if prepared within 30 days, do not provide timely sentencing information to custodial authorities and others responsible for immediate execution of the court's sentence. Courts cannot and, in fact, do not await the preparation of a transcript before sentences are executed.

Perhaps because of the ineffectiveness of the mandatory transcript requirement, an alternative method of recording sentencing information is in place in most counties. According to a poll conducted by the CCJ, 72 of Minnesota's 87 counties presently use a sentencing form or order to record essential plea and sentencing information at the hearing. Thus the terms and conditions of the sentence are immediately captured and can be transmitted readily to custodial authorities, allowing timely decisions regarding programming and release date. Our new computerized case management and information-sharing systems, MNCIS and CRIMNET, will require that essential plea and sentencing data be captured in a standardized format suitable for timely electronic storage and transmission. Transcripts, even if timely prepared, will not satisfy this need.

Elimination of mandatory transcripts in favor of transcription only when needed is in step with the practice in other states. The CCJ conducted a poll of other states and found that of the 42 states responding, 38 do not require automatic transcription of guilty

plea and sentencing hearings, but instead rely on standardized forms and court orders to capture essential sentencing information. Of the remaining four states, only California has a mandatory transcript requirement of the same scope as Minnesota.

Despite widespread lack of compliance with and the ineffectiveness of the mandatory transcript requirement, it nevertheless remains a costly burden on the limited financial resources of the judicial branch. In 2003, the judicial branch sustained a significant budget reduction in the form of a 3% direct cut and absorption of projected insurance and potential wage increases. Because the vast bulk of the budget of the judicial branch is devoted to personnel, there are very few options that would not involve significant layoffs, which would jeopardize the court's ability to maintain sufficient staffing for normal court operations. Elimination of mandatory transcripts would result in a savings of \$3.2 million over a full biennium without adverse effect on the rights of the parties or the operations of the district court. Without this savings, an estimated 41 additional layoffs would result, crippling the operations of the district court in some areas of the state. In light of these budgetary concerns and the limited effectiveness of the requirement, the court cannot justify continuing the mandatory transcript requirement.

Transcripts of the plea and sentencing hearings may be necessary in particular cases or particular proceedings but not in the great majority of cases. In those instances in which the transcript is necessary, the transcript will be produced. The district court may direct preparation of a transcript for its own use without charge, and any person may order a transcript at their expense. Essential information will be captured in the plea and

sentencing forms, significantly reducing the need for transcripts and minimizing the cost-shift to other entities within the criminal justice system.

The purpose of the mandatory transcript rules can be met by alternative means that are more efficient, more effective and more consistent with actual current practice and with future technological needs. Public accountability will be enhanced by the availability of timely information in all cases. Accordingly, mandatory transcription will be eliminated in favor of standardized sentencing forms and transcripts of hearings prepared only when needed.

In conjunction with these changes, it is appropriate for the court to issue interim procedures and to provide for the creation of permanent court rules relating to custody and control of a court reporter's stenographic notes and tapes, which are the property of the State of Minnesota, as well as rates charged for preparation of a transcript when requested. To the extent that Minn. Stat. §§ 243.49 and 631.41 (2002) and other statutes conflict with the rules and procedures promulgated herein, they are superceded by this order. *See State v. Johnson*, 514 N.W.2d 551, 553-54 (Minn. 1994) (stating that regulation of matters of court procedure is a judicial function); *State v. Willis*, 332 N.W.2d 180, 184 (Minn. 1983) (same); *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981) (judicial function includes controlling court records and agents of the court); *In re Clerk of Courts' Compensation for Lyon County*, 308 Minn. 172, 176, 241 N.W.2d 781, 784 (1976) ("Inherent judicial power governs that which is essential to the existence, dignity, and function of a court because it is a court").

The court recognizes that the elimination of mandatory transcripts could have an adverse financial impact on very loyal and integral members of the judicial family – court reporters – and their financial concerns, as well as the financial concerns of all court personnel, are very important. Whether to continue mandatory transcripts, however, is a separate and distinct issue from the issue of wages and benefits for court reporters and the issue of wages and benefits is best addressed in another forum.

Now, therefore, the court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota to be effective November 5, 2003. Minn. Stat. §§ 243.49 and 631.41 (2002) are superceded to the extent that they conflict with these amendments. The Advisory Committee on Rules of Criminal Procedure is requested to amend the comments to the rules to reflect these amendments.
2. Transcripts for guilty plea and sentencing hearings held prior to November 5, 2003 shall be paid in accordance with Minn. R. Crim. P. 15.09 and 27.03, subd. 6 as they existed prior to the amendments provided for in this order if the transcripts for those hearings are filed within thirty days of the guilty plea and/or sentencing hearing.

3. Forms 49A and 49B are models of the sentencing form provided for in Minn. R. Crim. P. 27.03, subd. 6, as amended by this order. These forms will be made available in electronic format in the Court Rules section of the Supreme Court public website: <http://www.courts.state.mn.us>. The Supreme Court Technology Planning Committee is directed to develop, through the MNCIS project and in consultation with appropriate criminal justice partners, a standardized, uniform state-wide sentencing form or order that captures for immediate transmission essential sentencing information consistent with Minn. R. Crim. P. 27.03, subd. 6 as amended herein. The form shall be completed and implemented in conjunction with the MNCIS rollout.
4. Court reporters and operators of electronic recording equipment shall file the stenographic notes or tape recordings of guilty plea or sentencing hearings with the court administrator within 90 days of sentencing. The reporter or operator may retrieve the notes or recordings if necessary. Minnesota Statutes § 486.03 (2002) is superceded to the extent that it conflicts with this procedure.
5. No charge may be assessed for preparation of a transcript for the district court's own use; any other person may order a transcript at their own expense.
6. The maximum rate charged for the transcription of any proceeding shall be established by the Conference of Chief Judges. Minnesota Statutes § 486.06 (2002) is superceded to the extent that it conflicts with this procedure.

7. The Supreme Court Advisory Committee on General Rules of Practice shall draft rules in accordance with paragraphs 4, 5 and 6 of this order, and may recommend additional procedures for ensuring the availability and transcribability of the record, such as requiring that the court reporter file or make available his or her personal stenographic dictionary.

DATED: October 31, 2003.

BY THE COURT:

/s/ _____
Kathleen A. Blatz
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEEDURE

1. Rule 15.09. Record of Proceedings

Amend Rule 15.09 as follows:

Upon a guilty plea to an offense punishable by incarceration, either a verbatim record of the proceedings shall be made, or in the case of misdemeanors, a petition to enter a plea of guilty, as provided in the Appendix B to Rule 15, shall be filed with the court. If a written petition to enter a plea of guilty is submitted to the court, it shall be in the appropriate form as set forth in ~~Appendix A and Appendix B~~ the Appendices to this rule. ~~In felony and gross misdemeanor cases, any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.~~ The defendant, prosecution, or any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule.

2. Appendix to Rule 15.

Insert the following form as Appendix D to Rule 15: *(shown on next page)*

APPENDIX D TO RULE 15

PLEA AGREEMENT
(Check all boxes that apply)

Defendant pleads guilty to Count(s) _____ (as amended to _____
_____).

Count(s) _____ in File(s) _____ are Dismissed by the prosecuting attorney.

Continuance for Dismissal for _____ years/months on conditions listed below:

SENTENCING RECOMMENDATIONS TO THE COURT:

Prosecutor will remain silent at sentencing.

Joint recommendations of Prosecution and Defense as to Sentencing: *(Check all that apply)*

- ___ Stay of Adjudication for _____ years/months on conditions listed below.
- ___ Sentence pursuant to Minn. Stat. §152.18 on conditions listed below.
- ___ Staggered sentence pursuant to Minn. Stat. § 169A.275 on conditions listed below.
- ___ Stay of Imposition of Sentence.
- ___ Stay of Execution of Sentence.
- ___ Execution of Sentence (with cap of _____ years/months/days prison/local jail time).
- ___ _____ Conditional Release Term of _____ years is Applicable.
- ___ Aggravated Dispositional/Durational Departure.
- ___ Mitigated Dispositional/Durational Departure.

Jointly Recommended Conditions of Sentence or Stay: *(Check all that apply)*

- ___ Cap of _____ years/months/days of prison/local incarceration.
- ___ _____ years/months/days of prison/local incarceration.
- ___ Electronic Home Monitoring for _____ years/months/days.
- ___ Fine of \$ _____ plus applicable surcharges and fees.
- ___ Sentence To Service or Community Service may be used to work off incarceration time or fine.
- ___ Restitution of \$ _____/To be certified. ___ Joint and several restitution.
- ___ Chemical Dependency Evaluation and follow all treatment recommendations.
- ___ Intensive Alcohol Monitoring Program.
- ___ Psychological Evaluation and follow all treatment recommendations.
- ___ Sex Offender Evaluation and follow all treatment recommendations.
- ___ Domestic Abuse/Anger Management Evaluation and follow all treatment recommendations.
- ___ Circle Sentencing Program.
- ___ Participate in Victim/Offender Mediation.
- ___ No contact with _____.
- ___ Other: _____

Prosecutor

Defense Counsel

Defendant

Date

3. Rule 27.03. Sentencing Proceedings.

Amend Rule 27.03, subd. 4(C) as follows:

(C) For felony cases if the sentence imposed departs from the sentencing guidelines applicable to the case, the court shall state, on the record, findings of fact as to the reasons for departure. In addition, the reasons for departure shall either be: (a) stated in a sentencing order; and shall forward or cause to be forwarded, to the sentencing guidelines commission a copy of the transcript of that portion of the record or a completed or (b) recorded in the departure form report as provided by the sentencing guidelines commission and attached to the sentencing form provided for in subdivision 6. Such departure report ~~The sentencing order or sentencing form with attached departure report shall be filed with the commission and the clerk of court for the trial court within 15 days after the date of sentencing.~~

4. Rule 27.03. Sentencing Proceedings.

Amend Rule 27.03, subd. 6 as follows:

Subd. 6. Record. (A) A verbatim record of the sentencing proceedings shall be made. In felony and gross misdemeanor cases any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney. The defendant, prosecution, or any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule.

(B) Information from the sentencing proceeding shall also be recorded in a sentencing form or order that, at a minimum, contains:

(1) the defendant's name;

(2) case number;

(3) for each count:

a. if the defendant pled guilty to or was found guilty of the offense:

i. the offense date;

ii. a citation to the offense statute and level of offense;

iii. the information specified in subdivision 4 (precise terms of sentence including the amount of any fine, time spent in custody, whether the sentence is a departure and if so, the reasons therefor, and terms and conditions of probation);

iv. the level of sentence; and

v. restitution, if appropriate, and whether it shall be joint and several with other persons; or

b. if the defendant did not plead guilty to or was not found guilty of the offense, that the defendant was acquitted or the count was dismissed;

(4) other financial obligations such as surcharges, law library fees, court costs, and treatment evaluation costs; and

(5) the signatures of the sentencing judge and defendant.

The sentencing form or order shall be provided in place of the transcript required in Minnesota Statutes sections 243.49 and 631.41.

6. Rule 28.05. Appeal from Sentence Imposed or Stayed.

Amend Rule 28.05, subd. 1(2) as follows:

(2) Transmission of Record. Upon receiving a copy of the notice of appeal, the ~~clerk of the court administrator for the~~ trial court shall immediately forward to the clerk of the appellate courts; (a) a transcript of the sentencing hearing, ~~if any and any written explanation of sentence by the trial court which is not already included in the transcript,~~ (b) the sentencing order or sentencing form with the departure report, if any, attached, (c) the sentencing guidelines worksheet, and ~~(e)~~ any presentence investigation report.

7. Replace form 49 with forms 49A and 49B as follows: *(shown on next two pages)*

State of Minnesota	District Court
County _____	Judicial District _____ Case Number _____
State of Minnesota vs. _____, Defendant.	CRIMINAL JUDGMENT / WARRANT OF COMMITMENT

TERMS AND CONDITIONS OF SENTENCE		Date Pronounced: _____	
Charge Resulting in Plea or Finding of Guilt	Minn. Stat. §	Count	Level of Offense
Offense Date: _____	Non-Conviction Dispositions: Count Number(s): _____ <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted		

FELONY LEVEL SENTENCE

Imposition of sentence is stayed for _____ years, _____ months, and _____ days; **OR**

Commitment to the custody of the Commissioner of Corrections for _____ years, _____ months, and _____ days. The sentence consists of two parts: a minimum term of imprisonment equal to two thirds (2/3) of the total executed sentence, and a maximum supervised release term equal to one-third (1/3) of the total executed sentence. Execution of this sentence is stayed for _____ years, _____ months.

Defendant shall pay a fine of \$_____, of which \$_____ is stayed for _____ years, _____ months.

Other _____.

MISDEMEANOR **GROSS MISDEMEANOR LEVEL SENTENCE**

Stay of imposition for _____ years, _____ months; **OR**

Sentenced to jail for _____ days at this location: _____. In lieu of jail, may serve: _____ . Execution of this sentence is stayed for _____ years, _____ months.

Defendant shall pay a fine of \$_____, of which \$_____ is stayed for _____ years, _____ months.

JAIL CREDIT: Credit for time spent in custody: _____ days.

SENTENCE DEPARTURE: Sentence departs from the presumptive sentence under the Minnesota Sentencing Guidelines. **Attach a departure report.** Send a copy of this form and the attached departure report to the Minnesota Sentencing Guidelines Commission.

PROBATION: The Defendant is placed on probation.

FINANCIAL CONDITIONS

The following financial conditions also apply to Case# _____ Count(s) _____.

Fine Imposed \$_____ Fine Stayed \$_____

Restitution jointly and severally with: _____

<input type="checkbox"/> Restitution	\$ _____
<input type="checkbox"/> Surcharge	\$ _____
<input type="checkbox"/> Law Library	\$ _____
<input type="checkbox"/> Court Costs	\$ _____
<input type="checkbox"/> Chem Fee	\$ _____
<input type="checkbox"/> Other: _____	\$ _____
<input type="checkbox"/> Other: _____	\$ _____
<input type="checkbox"/> Other: _____	\$ _____
TOTAL	\$ _____

ADDITIONAL CONDITIONS

_____ days in jail as a condition of a stayed sentence. In lieu of jail, defendant may: _____.

Commit no felonies, gross misdemeanors or misdemeanors.

No alcohol/ illegal drug use. Enforce with random drug testing.

Complete these evaluations/programs and follow recommendations:

Domestic Abuse Chemical Dependency

Sex Offender Psychological Evaluation/ Counseling

Other: _____

Other: _____

_____ hours community service by _____.

Other: _____

Other: _____

Other: _____

Other: _____

COMMENTS:	Sentencing Judge: _____ Date: _____
	I understand the terms and conditions of my sentence: _____
	Defendant : _____ Date: _____

<p>State of Minnesota</p> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">County _____</div> <p>State of Minnesota vs. _____, Defendant.</p>	<p>District Court</p> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> Judicial District _____ Case Number _____ </div> <p align="center">ORDER FOR CONDITIONS PRIOR TO CRIMINAL JUDGMENT</p>
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TERMS AND CONDITIONS	Date Pronounced: _____
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	Minn. Stat. §	Count	Level of Offense

Offense Date: _____

Adjudication is stayed for _____ years, _____ months and _____ days; **OR**

Pursuant to Minnesota Statute § 152.18, entry of judgment is stayed for _____ years, _____ months and _____ days.

The defendant is placed on probation.

<u>FINANCIAL CONDITIONS</u>	<u>ADDITIONAL CONDITIONS</u>
<p>The following financial conditions also apply to Case# _____ Count(s) _____.</p> <p>Restitution jointly and severally with: _____</p> <p><input type="checkbox"/> Restitution _____</p> <p><input type="checkbox"/> Surcharge \$ _____</p> <p><input type="checkbox"/> Law Library \$ _____</p> <p><input type="checkbox"/> Court Costs \$ _____</p> <p><input type="checkbox"/> Chem Fee \$ _____</p> <p><input type="checkbox"/> Other: _____ \$ _____</p> <p><input type="checkbox"/> Other: _____ \$ _____</p> <p><input type="checkbox"/> Other: _____ \$ _____</p> <p>TOTAL \$ _____</p>	<p><input type="checkbox"/> _____ days in jail as a condition of a stayed sentence. In lieu of jail, defendant may : _____.</p> <p><input type="checkbox"/> Commit no felonies, gross misdemeanors or misdemeanors.</p> <p><input type="checkbox"/> No alcohol/ illegal drug use. <input type="checkbox"/> Enforce with random drug testing.</p> <p><input type="checkbox"/> Complete these evaluations/programs and follow recommendations:</p> <p style="padding-left: 20px;"><input type="checkbox"/> Domestic Abuse <input type="checkbox"/> Chemical Dependency</p> <p style="padding-left: 20px;"><input type="checkbox"/> Sex Offender <input type="checkbox"/> Psychological Evaluation/ Counseling</p> <p style="padding-left: 20px;"><input type="checkbox"/> Other: _____</p> <p style="padding-left: 20px;"><input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> _____ hours community service by _____.</p> <p><input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> Other: _____</p> <p><input type="checkbox"/> Other: _____</p>

<p><u>COMMENTS:</u></p> <p> </p>	<p>Sentencing Judge: _____ Date: _____</p> <p>I understand these terms and conditions:</p> <p>Defendant: _____ Date: _____</p>
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