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An Overview of the Minnesota Rules of Criminal Procedure

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As lawyers and judges, we base our professional existence upon the conceptually fluid course of legal development. We tend, nevertheless, to cast a critical eye on those practices and procedures that deviate from the familiar. To some extent, the new Minnesota Rules of Criminal Procedure, an ambitious effort to compile, modify, and solidify existing statutory and judicial authority, have evoked this tendency. On the other hand, viewing the rules as a unitary system for the effective administration of criminal justice clearly reveals that their implementation will satisfy the paramount need for just and speedy criminal proceedings.

The many decisions in the last 20 years in which the United States Supreme Court has broadly interpreted constitutional protections for criminal defendants[1] have figured importantly in the recent trend to revise state codes of criminal procedure. Seeking to comply with constitutional mandates from courts haunted by the "ghost of the innocent man convicted,"[2] the Minnesota

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1. *See, e.g.*, Terry v. Ohio, 392 U.S. 1 (1968) (establishing the stop-and-frisk doctrine); McCray v. Illinois, 386 U.S. 300 (1967) (permitting the use of reliable informers); Miranda v. Arizona, 384 U.S. 436 (1966) (expanding the application of the fifth amendment to the states); Escobedo v. Illinois, 378 U.S. 478 (1964) (establishing right to counsel during interrogation before indictment); Jackson v. Denno, 378 U.S. 368 (1964) (requiring a preliminary hearing to determine whether evidence offered for admission violates defendant's constitutional rights); Aguilar v. Texas, 378 U.S. 108 (1964) (requiring affirmative allegation that the affiant speaks with personal knowledge of matters establishing probable cause for the issuance of a warrant); Brady v. Maryland, 373 U.S. 83 (1963) requiring discovery of evidence favorable to the accused); Draper v. Washington, 372 U.S. 487 (1963) (providing that indigents have the right to a free transcript or an alternative record of the proceedings); Fay v. Noia, 372 U.S. 391 (1963) (finding state procedural obstacle not a bar to federal habeas review of state criminal proceedings); Douglas v. California, 372 U.S. 353 (1963) (providing that indigents be given the assistance of counsel for appeal from a criminal conviction); Gideon v. Wainwright, 372 U.S. 335 (1963) (extending the sixth amendment to the states); Mapp v. Ohio, 367 U.S. 643 (1961) (extending fourth amendment prohibitions to the states).

2. Scott, *Introduction*, MINNESOTA RULES OF COURT (unnumbered page) (1975).

supreme court and the Minnesota legislature coordinated their efforts before the adoption of the new rules. For example, in *State v. Mertz*[3] the supreme court instituted a form of post-conviction relief available after expiration of the time for taking an appeal; the court sought to prevent interference in state court proceedings by federal courts responding to a writ of habeas corpus.[4] The legislature followed suit by enacting post-conviction relief legislation.[5]

Unfortunately, implementing constitutional directives by judicial decision and responsive legislation required a multitude of hearings and complex, duplicative proceedings involving unjustifiable expense and delay. To avoid such waste, the legislature took progressive steps empowering the supreme court to promulgate rules governing the entire realm of criminal procedure. Following legislative guidelines,[6] the court consolidated all statutory and common law governing criminal procedure and replaced it with a systematic and simplified process for the administration of criminal justice.

Viewing the new rules as a vehicle to transport a criminal defendant expeditiously through the system with maximum regard for his rights, yet with regard as well for the rights of his accuser, provides a useful perspective of this simplified and comprehensive procedure. For example, the rules attempt to eliminate unnecessary procedural distinctions between felonies and various misdemeanors in municipal, county, and district courts.[7]

3. 269 Minn. 312, 130 N.W.2d 631 (1964). *See also* State *ex rel.* Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (1966) (probable cause must be shown in the complaint and the warrant); State v. Thompson, 273 Minn. 1, 139 N.W.2d 490 (1966) (adopting the rule in Jencks v. United States, 353 U.S. 657 (1957), that the defendant must be allowed to examine pretrial statements of prosecution witnesses); State *ex rel.* Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965) (all constitutional defenses must generally be considered in one comprehensive preliminary hearing in district court); State v. Spreigl, 272 Minn. 488, 1399 N.W.2d 167 (1965) (defendant must be provided an opportunity to learn of prior convictions to be introduced at trial).

4. The court stated:

> Ordinarily we would not review constitutional and jurisdictional questions raised on appeal when the statutory time for taking such appeal had expired. It is apparent, however, from recent decisions of the United States Supreme Court, Fay v. Noia, 372 U.S. 391 [(1963) (no state procedural obstacles can bar federal habeas review)] . . . that the issue raised here could be presented to us by habeas corpus. We accordingly treat the appeal as a proceeding seeking postconviction relief and consider the errors assigned.

269 Minn. at 314, 130 N.W.2d at 633.

5. MINN. STAT. ch. 590 (1974).

6. MINN. STAT. § 480.059 (1974).

7. MINN R. CRIM. P. 1.01. For example, the rules standardize the

The rules also provide for an orderly timetable to ensure rapid disposition of criminal cases. In felony and gross misdemeanor cases, an arrested person in custody must be brought before the county or municipal court within 36 hours of the arrest.[8] Within 10 days of his first appearance in county or municipal court, the accused must be afforded an initial appearance in district court,[9] and the omnibus hearing[10] must be held within the following 14 days.[11] The trial itself must begin, if either party so demands, within 60 days after a plea of not guilty.[12] The procedure varies slightly in misdemeanor cases. After the first appearance in county or municipal court,[13] the court may order a pretrial conference;[14] in addition, either the accused or prosecution may demand an evidentiary hearing.[15] The trial must begin within 60 days or, if the defendant is in custody, within 10 days of demand.[16] The rules temper this apparently rigid schedule with a degree of flexibility. Upon a showing of cause by either party, a court may order a particular time period enlarged.[17] The rules also permit the courts to excuse a failure to commence trial within the time limitations in some circumstances.[18] The scheme is thus designed to dispose of matters as quickly and efficiently as possible[19] while pre-

complaint procedure and the probable cause affidavit or testimony (rule 2), the bases for the prosecutorial decision to issue a summons (rule 3), and the procedures upon arrest with or without a warrant (rule 4).

8. *Id.* 4.02(5)(1).

9. *Id.* 5.03.

10. *Id.* 11.

11. *Id.* 8.04(c).

12. *Id.* 11.10.

13. If the defendant is not brought before a judge within 36 hours, however, he *must* be released upon citation as provided in rule 6.01(2). *Id.* 4.02(5)(1).

14. *Id.* 12.01.

15. *Id.* 12.04.

16. *Id.* 6.06. This rule further provides that a defendant must be released from custody, subject to the nonmonetary release conditions of rule 6.02(1), should he not be tried within 10 days of the demand. For a period until July 1, 1976, the trial of misdemeanor cases within 60 days will not be required unless so ordered by a judge or judicial officer of the county court. In re Proposed Rules of Criminal Procedure, Order of the Supreme Court of Minnesota, 299 Minn. (unnumbered page) (1974).

17. *See* MINN. R. CRIM. P. 34.02. Some time periods, however, are not subject to enlargement orders. For example, the 15-day period provided in rule 26.03(17)(3) during which a defendant may renew his motion for acquittal following a jury verdict of guilty may not be enlarged. *Id.* 34.02.

18. *Id.* 6.06, 11.10. These rules excuse late commencement of trials upon "good cause shown" by the prosecution or defendant.

19. Until July 1, 1976 the district and county courts have been

serving sufficient flexibility to accommodate unavoidable delay.

The rules expand the use of citations as an alternative to arrest and detention, particularly in misdemeanor cases.[20] For example, law enforcement officers acting without a warrant must issue only citations to alleged misdemeanants unless there exists reason to believe that arrest or continued detention following arrest is necessary to prevent an accused from harming himself or others, to prevent further criminal conduct, or to ensure that the accused will appear in court.[21] Before the adoption of the rules, there were no such conditions on taking an individual into custody.

The rules have clarified requirements for post-arrest appearances in court.[22] A person arrested *with* a warrant must be brought "promptly" before a magistrate.[23] On the other hand, if a person is arrested *without* a warrant and is not released from custody, he must be brought before a magistrate "without unnecessary delay."[24] In neither case must the accused wait longer than 36 hours for a court appearance, unless a judge or judicial officer is unavailable.[25]

The rules have also simplified pleading. In felony cases the prosecution may use either a complaint[26] or an indictment.[27]

urged to exhibit tolerance for insubstantial deviations from the rules where a good faith effort to comply can be shown. In re Proposed Rules of Criminal Procedure, Order of the Supreme Court of Minnesota, 299 Minn. (unnumbered page) (1974).

20. *See, e.g.*, MINN. R. CRIM. P. 6.01(1)(1)(a), (1)(1)(b), (2).

21. *Id.* 6.01(1)(1)(a); *see id.* 6.01(1)(1)(b), (2). Under certain conditions, citations may be issued for gross misdemeanors and felonies. *Id.* 6.01(1)(2), (2).

22. *See id.* 3, Comment.

23. *Id.* 3.02(2)(1), (2). If the court that issued the warrant is in session, the accused must be brought "promptly" before that court. If the warrant was issued by a justice of the peace, the accused must be brought promptly before a court in the county in which the alleged offense was committed. There is no further limitation. If the appropriate court is not in session, however, the accused must only be brought before the judge or judicial officer "without unnecessary delay." *Id.* 3.02(2)(3); *cf.* note 24 *infra* and accompanying text.

24. MINN. R. CRIM. P. 4.02(5)(1). There is no requirement that the defendant be brought promptly before the court even if it is in session. The advisory committee contemplated that the prosecutor might need additional time to determine whether to continue the prosecution and draw the complaint. And in exceptional cases, the prosecutor may seek enlargement of the time limitation under rule 34.02. *Id.* 4, Comment.

25. *Id.* 3.02(2)(3), 4.02(5)(1). The intent of both rules is not to provide an automatic 36-hour period during which the accused may be held without a court appearance. Rather, the accused must be brought before a proper judge or judicial officer as soon as one becomes available within 36 hours of arrest. *Id.* 3, Comment; *id.* 4, Comment.

26. *Id.* 17.01.

27. *Id.* 2.

The controversial bill of particulars has been abolished.[28] Additionally, where misdemeanants have been "tab charged,"[29] a formal complaint must be issued only on demand.[30]

Perhaps the most significant changes affected by the rules concern discovery.[31] Discovery has been made available to both prosecutors and defendants in conformity with the position recently advanced by the United States Supreme Court:

> The adversary system of trial is hardly an end in itself; it is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played. We find ample room in that system, at least as far as "due process" is concerned . . . to enhance the search for truth in the criminal trial by insuring both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.[32]

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28. *Id.* 17.02(4). Information that was normally found in the bill of particulars, however, is discoverable pursuant to rules 7.03 and 9. *Id.* 17, Comment.

29. Rule 4.02(5)(3) describes the tab charge procedure:

> If there is no complaint made and filed . . . , the clerk [of court] shall enter upon the records a brief statement of the offense charged including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. This brief statement shall be the complaint and is referred to as a tab charge . . . .

30. Rule 4.02(5)(3) provides that, if the defendant demands, a formal complaint must be issued and filed within 48 hours if the defendant is in custody and within 30 days if the defendant is not in custody. Unless the defendant waives these time limitations, he must be released if the prosecution fails to provide a valid complaint within the prescribed time. *Id.* To be valid a complaint must comply with the mandates of rule 2 and must have been issued on probable cause. *Id.* Until July 1, 1976 failure to file a valid complaint within 30 days of the demand did not bar prosecution of a misdemeanor case under rule 17.06(4)(3) unless so ordered by the judge or judicial officer of the county court. In re Proposed Rules of Criminal Procedure, Order of the Supreme Court of Minnesota, 299 Minn. (unnumbered page) (1974).

It is unlikely that a significant number of defendants who have been tab charged will request a formal complaint, for, because of the discovery permitted under rule 7.03, it will often be unnecessary to clarify the proceedings. MINN. R. CRIM. P. 4, Comment. Moreover, the supreme court has ordered that no attorney is required to demand a formal complaint when such a demand would be frivolous or otherwise unnecessary to a considered disposition of the matter on the merits and would unnecessarily inconvenience opposing counsel or others. Order of the Supreme Court of Minnesota, *supra.*

31. *See* MINN. R. CRIM. P. 7.03, 9.

32. Williams v. Florida, 399 U.S. 78, 82 (1970). In *Williams* the Court held that a defendant was not deprived of due process or of the privilege against self-incrimination by the liberal reciprocal discovery provisions of the Florida notice-of-alibi statute. In Wardius v. Oregon, 412 U.S. 470 (1973), however, an Oregon statute which did not provide for reciprocal discovery and which prohibited the introduction of alibi evidence without pretrial disclosure was held unenforceable against the defendant. The Court reasoned that requiring a defendant to reveal his

With the exception of the notice-of-alibi statute,[33] never before has the prosecution been allowed such far-reaching discovery of evidentiary matters within the control of the defendant.[34] By court order, the prosecution may discover evidence of the defendant's physical nature through the use of lineups, voice exemplars, and blood test.[35] Moreover, the prosecution may discover the defendant's case, including the names of witnesses, the identity of documents and other tangible evidence, and the defenses that will be raised.[36]

The discovery rules also aid the defendant. In the past, the defendant in felony and misdemeanor cases had been confined to discovering evidence favorable to his case, obtaining information in hearings to suppress unconstitutionally obtained evidence, and learning of those prior convictions that the prosecution intended to introduce at trial.[37] He may now discover the prosecution's case by direct inquiry before trial, including witnesses' names,[38] documents and other tangible evidence,[39] and reports of tests and examinations.[40] The defendant may also discover, by court order, evidence that demonstrates innocence, negates guilt, or reduces culpability.[41] Upon motion and with notice to the prosecuting attorney, he may obtain a transcript of the grand jury proceedings.[42] And in misdemeanor cases, the de-

alibi defense when he had no reason to believe that such disclosure would allow him to discover the prosecution's rebuttal witnesses would be inconsistent with due process. The Court did suggest, however, that the statute would be prospectively enforceable if it were construed to require that the defendant be notified of his reciprocal discovery opportunities. And in United States v. Nobles, 422 U.S. 225 (1975), the Court concluded that the prosecution could be allowed to discover the written report of a defense witness when defense counsel intended to use the testimony of that witness to impeach the credibility of key prosecution witnesses. The defendant by electing to call the witness was held to have waived the protection of the work-product doctrine, enunciated in Hickman v. Taylor, 329 U.S. 495 (1947), with respect to matters covered in the witness's testimony.

33. MINN. STAT. § 630.14 (1974).

34. Rule 9.02 provides for prosecutorial discovery in cases involving felonies and gross misdemeanors. Discovery in misdemeanor cases may be had upon motion to the court. *Id.* 7.03.

35. *Id.* 9.02(2)(1).

36. *Id.* 9.02(1)(1)(a), (1)(3)(a).

37. *See* State *ex rel.* Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1969).

38. MINN. R. CRIM. P. 9.01(1)(1). *See also id.* 9.02(1)(3)(b).

39. *Id.* 9.01(1)(3). *See also id.* 9.02(1)(1).

40. *Id.* 9.01(1)(4). *See also id.* 9.02(1)(2). The defendant may still have discovery of his criminal record, but without the need for a hearing. *Id.* 9.01(1)(5), 9.02(1)(3)(d).

41. *Id.* 9.901(2). The defendant may also obtain similar information without a court order. *See id.* 9.01(1)(b).

42. *Id.* 18.05(2). This rule was designed to supplement the discov-

fendant may inspect police investigatory reports.[43] Neither party, however, may discover the work product of the other.[44]

The omnibus hearing,[45] a second major development, consolidates into one appearance before the district court[46] matters formerly requiring a minimum of two pretrial hearings. If the defendant does not plead guilty at the arraignment,[47] issues of probable cause,[48] *Rasmussen* and *Spreigl* motions,[49] and any other issues[50] that can be heard or disposed of before trial must be raised at the omnibus hearing.[51] The principal objective of this consolidation is to decrease the time spent in pretrial procedures so that a speedy trial can be ensured within the guidelines of the most recent United States Supreme Court decisions.[52]

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ery provisions of rule 9.01(1). *Id.* 18, Comment. The court may restrict or defer specified disclosure by protective order pursuant to rule 9.03(5).

Grand jury proceedings have been affected by several modifications of their established procedures. The "key man" selection process in effect in Hennepin, Ramsey, and Saint Louis counties, which authorized choosing jurors best qualified by education, moral character, and integrity, has been supplanted by a process of randomly selecting the grand jury list from a fair cross-section of qualified county residents. *Id.* 18.01 (2) (adopting the policy expressed in the Federal Jury Selection Act, 28 U.S.C. § 1861 (1970)). A witness testifying before the grand jury may request that his attorney be present during the testimony if he waives his immunity from self-incrimination. *Id.* 18.04. This practice was specifically forbidden by the controlling statutes, MINNESOTA STATUTES §§ 628.63, 630.18(3), now superseded to the extent they are inconsistent with the rules.

43. MINN. R. CRIM. P. 7.03.

44. *Id.* 9.01(3)(1), 9.02(3).

45. Rule 11 creates the omnibus hearing in felony and gross misdemeanor cases. The advisory committee was of the opinion that the multiplicity of court appearances that spawned the decision to consolidate the hearings was not a problem in misdemeanor cases. In these cases, rule 12 provides a pretrial conference when ordered by the court and an evidentiary hearing immediately prior to trial.

46. Rule 11.01 provides an exception to the general rule that the omnibus hearing be conducted in district court by permitting referral to municipal or county courts in specified instances.

47. MINN. R. CRIM. P. 11. Rule 8.02 provides that if the defendant pleads guilty, the sentencing and presentencing procedures of rule 27 must be followed.

48. *Id.* 11.03.

49. *Id.* 11.02(1).

50. *Id.* 11.04.

51. If the hearing takes place in either the municipal or county court, *id.* 11.01, there is a right of appeal to the district court. *Id.* 11.09(1). If the defendant is not discharged after the omnibus hearing or on appeal, pleadings must then be entered. *Id.* 11.10.

52. *See, e.g.*, Barker v. Wingo, 407 U.S. 514 (1972) (constitutional right to speedy trial determined by ad hoc balancing of conduct of defendant and of prosecution).

The rules also provide for major advancements with respect to the insanity defense.[53] At the defendant's election, the defense of mental incompetence to stand trial or mental irresponsibility at the time the crime was committed and the defense of not guilty of the elements of the offense charged may be considered either together or in a bifurcated proceeding.[54] The prosecution may, for the first time, subject a defendant asserting the defense of mental illness to a psychiatric examination.[55] Although this rule abrogates the defendant's medical privilege,[56] the defendant is afforded protection from self-incrimination by evidentiary restrictions on the use of the disclosed information in the proceeding to determine guilt.[57]

After only a few months' experience, it is difficult to calculate the success of the rules. Upon examination of the major innovations, it nonetheless appears that the desired ends of simplification and expedience have been met. To ensure adequate testing of their effectiveness, however, members of the bench and bar should make every effort to comply with the new procedures and to actively participate in the one-year period of implementation. Since the advisory committee continues to serve, the bench and bar should transmit any suggestions for improvement to it before the rules are reviewed by the supreme court this year. These rules have been adopted at the direction of the Minnesota bar; to remain a viable response to current problems, they require the continuing vigilance of that body.

53. MINN. R. CRIM. P. 20. MINNESOTA STATUTES §§ 611.026, 731.18, and 631.19 did not fully implement the equal protection and due process standards of Jackson v. Indiana, 406 U.S. 715 (1972) (same commitment and release standards must apply to those committed for offenses as to persons not charged with offenses); of McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972) (denial of due process to continue to hold petitioner on the basis of an ex parte order committing him to observation without the procedural safeguards commensurate with a long-term commitment); of Humphrey v. Cady, 405 U.S. 504 (1972) (one sought to be committed entitled to jury trial and other procedural protections regardless of the statutory authority for the commitment); or of Pate v. Robinson, 383 U.S. 375 (1966) (failure to afford defendant a hearing on competence to stand trial a deprivation of due process under the fourteenth amendment).

54. MINN. R. CRIM. P. 20.02(6)(2).

55. *Id.* 20.02(1).

56. *Id.* 20.02(6).

57. *Id.* 20.02(5).