

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

ORDER PROMULGATING AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE
AUTHORIZING ECOURTMN PILOT PROJECT

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure has recommended certain amendments to the Rules of Criminal Procedure to authorize the commencement of an ECourtMN pilot project in criminal matters that includes electronic filing and electronic service. The Court has reviewed the proposals and is advised in the premises.

IT IS ORDERED THAT:

1. The attached amendments to the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective September 1, 2012.
2. These amendments shall apply to all actions or proceedings pending or commenced on or after the effective date.
3. The inclusion of advisory committee comments is made for convenience and does not reflect court approval of the statements made therein.

Dated: July 26, 2012

BY THE COURT:

_____/s/_____

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

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

1. Amend Rule 7.01 as follows:

Rule 7.01 Notice of Omnibus Issues

(a) In any case where a right to a jury trial exists, the prosecutor must notify the defendant or defense counsel of:

(1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping;

(2) any confessions, admissions, or statements in the nature of confessions made by the defendant;

(3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or

(4) any evidence of lineups, show-ups, or other procedures used to identify the defendant or any other person.

(b) In felony and gross misdemeanor cases, ~~this~~ notice must be given in writing on or before the date set for the defendant's initial appearance in the district court under Rule 5.05.

(c) In misdemeanor cases, ~~this~~ notice must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or 7 days before trial if no pretrial conference is held.

(d) ~~This w~~ 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; ~~or~~

(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~~ or

(4) by electronic means if authorized by Minnesota Supreme Court Order and if service is made in accordance with that order.

2. **Add a new paragraph at the end of 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.

3. **Amend Rule 33 as follows:**

Rule 33 Service and Filing of Papers

Rule 33.01 Service; Where Required

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

Rule 33.02 Service; On Whom Made

Service required or permitted to be made on a represented party 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. Service may be made by electronic means 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.

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 a copy to each party and must make a record of the mailing. The court administrator may provide a copy by electronic means if authorized by an order of the Minnesota Supreme Court and if provided in accordance with that order. 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 required to be served must be filed with the court administrator. Papers must be filed as in civil actions, except that when papers 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. If the search warrant is filed with the court when signed by the judge, the warrant must remain sealed until the expiration of 10 days or a longer period of time if so ordered by the court.

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

(d) An order must be issued granting the request in whole or in part if, from affidavits, 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 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 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. 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 must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

Rule 33.05 Facsimile and Electronic Transmission

Complaints, orders, summons, warrants, and supporting documents – including orders and warrants authorizing the interception of communications 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 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.

4. Add 2 new paragraphs at the end of the Comments to Rule 33, as follows:

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.