

MEMORANDUM

To: Advisory Committee on Rules
From: Carolyn Koegler
Re: # 2018-005. N.H. R. Crim. P. 8(d).
Date: May 9, 2018

Judge Delker has submitted a suggestion to amend New Hampshire Criminal Procedure Rule 8(d). Judge Delker has spoken with Chief Judge Nadeau about this, and she supports the proposed changes. He explains the issue as follows:

This issue came up recently about whether related misdemeanors should be dismissed if the felony complaint is not indicted within 90 days. Rule 8(d) reads: "The superior court will dismiss without prejudice and vacate bail orders in all cases in which an indictment has not been returned ninety days after the matter is bound over, unless, prior to that time, the prosecution files a motion seeking an extension of time and explaining why the extension is necessary." (Emphasis added).

I read this to mean that both the felony complaints and related misdemeanors need to be dismissed upon failure to indict within 90 days. This doesn't make much sense because the State has no obligation to indict misdemeanors. The State may choose only to proceed on misdemeanors even if the Court dismisses the felony complaint. I don't think the case should be dismissed and bail order vacated in that situation.

Judge Delker proposes that New Hampshire Rule of Criminal Procedure Rule 8(d) be amended as follows (additions are in **[bold and in brackets]**; deletions are in ~~strikethrough~~):

Rule 8(d)(2) "Case initiated in Superior Court. The superior court will dismiss without prejudice **[all felony complaints and enhanced misdemeanors]** and ~~vacate bail orders in all cases in~~ in which an indictment has not been returned within ninety days of the complaint being filed, unless, prior to that time, the prosecution files a motion seeking an extension of time and explaining why the extension is necessary **[or the defendant waives speedy indictment in writing. If no other charges remain pending in the case after dismissal the court shall vacate all bail orders.]**"