

Carolyn A. Koegler

From: Hon. William Delker
Sent: Thursday, April 18, 2019 10:12 AM
To: Justice Patrick E. Donovan
Cc: Carolyn A. Koegler
Subject: Proposed Amendment to NH R Crim P 8
Attachments: Amendment to Rule 8 (extending indictment deadline based on warrant).docx

Dear Justice Donovan-

I have one more request for rule change from the superior court to submit. In some courts when a defendant fails to appear at arraignment, and the 90 day deadline for indictment passes, the complaint is dismissed and the warrant that was originally issued is vacated. Then the county attorney indicts at a later date and files a motion for an arrest warrant. In other instances if there are pending misdemeanors, the court dismisses the felony complaint but the misdemeanors remain pending. The court must then vacate the felony warrant and reissue a misdemeanor warrant. The staff, after a complex and time consuming process to recall the original warrant, then issues a new warrant. This creates a lot of unnecessary work. In other courts, the time to indict is simply tolled while the defendant is in warrant status, which keeps the warrant active and eliminates a whole lot of work for the staff.

Justice Nadeau and the superior court has requested that Rule 8 be amended to toll the indictment deadline while the defendant remains at large. I have attached proposed language.

Thank you,

Will Delker
Supervisory Judge
Rockingham County Superior Court
Brentwood, NH
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Rule 8. The Grand Jury

...

(d) *Indictment.*

(1) Case initiated in Circuit Court-District Division. 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.

(2) Case initiated in Superior Court. The superior court will dismiss without prejudice all felony complaints and enhanced misdemeanors in which an indictment has not been returned within 90 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.

(3) If a warrant has issued for the defendant's failure to appear at arraignment on complaints filed before indictment, or any other pre-indictment hearing in superior court, the indictment deadline in paragraph (d) is tolled. The superior court will dismiss without prejudice all felony complaints and enhanced misdemeanors if the defendant has not been indicted within 60 days after the defendant has appeared in superior court to answer to the charge. If no other charges remain pending in the case after dismissal the court shall vacate all bail orders.