

TO: Advisory Committee on Rules  
FROM: Subcommittee established to review Rule of Criminal Procedure 19  
DATE: December 1, 2022

2022-008

Prior to the June, 2022 meeting, Attorney Albee, on behalf of the Superior Court, submitted a proposed change to Rule 19. The rule effects the physical transfer of case files from the Circuit Court to the Superior Court and vice versa. A subcommittee composed of Attorney Albee and Judge Delker was created at the June meeting. The subcommittee was tasked with providing a revised proposal of Rule 19 for the September Committee meeting.

The subcommittee determined that an amendment to Rule of Criminal Procedure 19 was necessary to clarify when criminal cases may be transferred from Superior Court to Circuit Court and vice versa. The subcommittee proposed the following language:

#### Rule 19

##### Transfer of Cases

- 1) When any party files a motion in any superior court requesting the transfer of a case, or of a proceeding therein, to another superior court, the presiding judge may, after giving notice and an opportunity for a hearing to all parties, order such transfer.
- 2) When any party files a motion in any circuit court – district division requesting the transfer of a case, or of a proceeding therein, to another circuit court – district division, the presiding judge may, after giving notice and an opportunity for a hearing to all parties, order such transfer.
- 3) Except for de novo jury trial appeals, a case shall not be transferred from circuit court to superior court for from superior court to circuit court. If the parties agree to resolve a case

During the September meeting, the amendment was discussed. After discussion, the Committee unanimously voted to amend the language of Rule 19 as follows:

#### Rule 19

##### Transfer of Cases

- 1) When any party files a motion in any superior court requesting the transfer of a case, or of a proceeding therein, to another superior court, the presiding judge may, after giving notice and an opportunity for a hearing to all parties, order such transfer.
- 2) When any party files a motion in any circuit court – district division requesting the transfer of a case, or of a proceeding therein, to another circuit court – district division, the presiding judge may, after giving notice and an opportunity for a hearing to all parties, order such transfer.
- 3) ~~Except for de novo jury trial appeals,~~ **Unless otherwise allowed by statute or rule,** a case shall not be transferred from circuit court to superior court for from superior court to circuit court. If the parties agree to resolve a case pending in circuit court or superior court in the other trial court, the State must initiate a new case in that court by filing a complaint and filing a notice of nolle prosequi for the original case. Rule 19.