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New Hampshire Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Via e-mail only

Re: Comments on the proposals to amend Rules 1 – 19 of the New Hampshire Rules of Criminal Procedure

Advisory Committee:

I have had the opportunity to review the proposed amendments to the New Hampshire Rules of Criminal Procedure and I would appreciate your consideration of the following issues I foresee with the rules as currently written:

Rule 3(a): Requiring a Complaint to be signed under oath

Complaints charging a class A misdemeanor or felony filed in Superior Court over the past 8 years have not been required to be signed under oath. Since the accused will be entitled to a probable cause hearing, it seems unnecessary to require the complaints to be signed under oath even when filed by attorneys. As officers of the court, prosecuting attorneys are bound by the Rules of Professional Conduct to only file complaints which they believe have sufficient evidence to support a probable cause standard. Given these safeguards, this rule seems like a superfluous requirement.

Rule 4(a)(1): Timeframe for filing complaint

The one-hour timeframe for filing complaints prior to the arraignment presents a logistical challenge which could result in the dismissal of serious cases, potentially posing a danger to the public. Currently, the rule only requires that complaints for incarcerated defendants be filed prior to the commencement of the arraignment. Given that few defendants are incarcerated for misdemeanor-level crimes, the requirement for police departments to physically hand file complaints within hours of an arrest is not unduly burdensome.

Under the proposed rule, police departments will have to hand file complaints for incarcerated defendants held on misdemeanor and felony-level crimes, with no ability to e-file complaints, within a very tight timeframe.

To understand the challenge, consider the following hypothetical situation:

An officer of a small, remote, police department makes an arrest in the early morning hours and the defendant refuses a bail commissioner or is otherwise held. The arresting officer would complete the paperwork while on shift, but would need to leave the paperwork for the morning shift to both swear to and file since the court does not open until 8:00 a.m. and there is no overnight drop box for paperwork.

Dover and Rochester Circuit Court arraignments for incarcerated individuals occur at 11:00 a.m. and 11:30 a.m., respectively. Meaning, with the one-hour deadline, the morning shift would have just two hours to locate a justice of the peace (the Circuit Court staff will no longer swear to our paperwork) and drive to the respective district court to hand file that paperwork to meet the 1-hour deadline. For our more remote police departments, that trip can take upwards of a half hour during the morning commute. This is an extremely tight timeframe, especially if an emergency arose where police resources would need to be redirected elsewhere in the town. In the smaller towns where there is often only one or two officers on shift, this could very easily result in paperwork not being filed and/or cases being dismissed, or the town being without a police presence for an extended period of time.

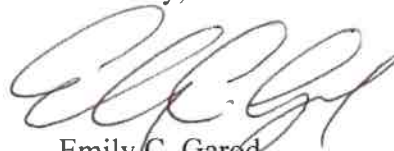
Of course, if there was an e-filing or other option to fax/email complaints, it would make the deadline much more workable. As it stands, this requirement will present a significant challenge to the police department and could result in the dismissal of serious cases and the release of dangerous individuals over incomplete paperwork.

Rule 4(g)(1): Requirement of Notice of Intent to Seek Class A Penalties Served on Defendant

The justification for requiring the State to file the Notice of Intent to Seek Class A Penalties is presumably so that the defendant knows he/she is facing potential incarceration and is entitled to counsel. However, since the Rules require the Court to inform the defendant of the potential penalties and right to appointed counsel when arraigned on a class A misdemeanor or felony under Rule 4(g)(2) or via their attorney when a waiver of arraignment under Rule 4(c) is filed, this requirement is redundant and unnecessary given that the complaint would also indicate the misdemeanor classification on its face.

Thank you for considering these comments as you finalize the rules.

Sincerely,



Emily C. Garod
Strafford County Attorney