



Allenstown Police Department

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October 23, 2023

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

Via email attachment to rulescomment@courts.state.nh.us

RE: 2023-012 New Hampshire Rules of Criminal Procedure 1-19

Dear Committee Members:

Thank you in advance for considering my input regarding the proposed changes to Rules 1-19 of the New Hampshire Rules of Criminal Procedure. As some of my comments are in direct agreement with those made by Merrimack County Attorney Paul A. Halvorsen, Esquire, I have copied his recommendations and so indicated when applicable.

Rule 3(a)

Change the wording of the proposed rule to read: “A misdemeanor or felony shall be signed under oath, provided that a Complaint filed by a **prosecutor** or police officer as defined in RSA 106-L:2...”

Rule 4(a)(1):

Change the wording of the proposed rule to read: “**If the defendant is not detained prior to arraignment, it shall be best practice to file any complaint with the court no later than fourteen (14) days prior to the date of arraignment.**” (P. Halverson)

Comment: We are a small police department and very rarely run into an issue filing a complaint within the fourteen (14) day window, but it does occasionally happen either due to timing of the arrest or a breakdown in the IMC system through which complaints are e-filed.

Rule 4(a)(2)

Change the wording of the proposed rule to read: **“If the defendant is detained pending arraignment, it shall be best practice to file a complaint with the court no later than one (1) hour prior to the scheduled arraignment.”** (P. Halverson)

Comment: As with many other agencies that have weighed in on this requirement, I agree that the time frame of one hour presents logistical challenges, especially for a small police department. Our department, like many others in the state, is currently experiencing significant officer staffing shortages and as the court schedule for video arraignments has not yet been determined for 2024, this requirement could pose significant compliance challenges.

In the event the two above recommendations are not accepted, I recommend that both **Rule 4(a)(1)** and **Rule 4(a)(2)** have a sentence added which states, **“The inability to meet the provisions of this rule shall not constitute a basis for dismissal of any filed complaint or discharge of any otherwise existing bail order.”** (P. Halverson)

Rule 4(g)(1)

Comment: Please consider incorporating the **Notice of Intent to Seek Class A Misdemeanor Penalties** into the State of New Hampshire Complaint. On the current complaint form, the State must mark whether the offense is a Class A or Class B misdemeanor. Pursuant to statute, the Defendant must receive a copy of their complaint, thus, the complaint provides sufficient notice to the Defendant as to the grade of the offense the State has charged. Requiring the state to file a separate **Notice of Intent Class A Misdemeanor Penalties** is duplicitous and a waste of paper. (P. Halverson, albeit the paper concern is mine)

Rule 6(a)(former 6)

Change the wording of the proposed rule to read: Finding of No Probable Cause: **“The [finding of no probable cause] shall not preclude the State from instituting a subsequent prosecution for that felony in Superior Court or prosecuting any remaining misdemeanor or violation level offenses related to the felony in the Circuit Court.”**

Comment: The current proposal is unclear regarding “instituting a subsequent prosecution for the same offense or another offense.” The State could not institute a prosecution for the same felony in the Circuit Court so it would have to be brought in Superior Court, but the question I have is whether a different felony arising out of the same case would be filed back in the Circuit Court?

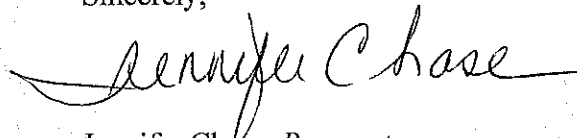
Rule 12(a)(1) Discovery

Change the wording of the proposed rule to read: "At the Defendant's first appearance before the court, the court shall inform the Defendant of their ability to obtain discovery from the State. **On misdemeanor and violation offenses the Defendant is required to submit a written request for discovery to the State, the State shall provide discovery to the Defendant as soon as practicable from the date upon which the State receives the Defendant's written request. The State shall furnish the Defendant with the following:**"

Comment: As written the rule could be interpreted to mandate that the State is required to provide discovery upon the Defendant's request, which could be at the arraignment. Typically, the State would be unprepared to do so, as in most instances the police reports have not even been approved at that time.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Chase". The signature is written in black ink and is positioned above the typed name and address.

Jennifer Chase, *Prosecutor*
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