

Rule 17. Indictment, Complaint and Tab Charge**Rule 17.01 Prosecution by Indictment, Complaint or Tab Charge**

Subd. 1. Offenses Punishable by Life Imprisonment. An offense punishable by life imprisonment must be prosecuted by indictment. The prosecutor may initially proceed by a complaint after an arrest without a warrant or as the basis to issue an arrest warrant. Subsequent procedure must be in accordance with Rules 8 and 19. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided by Rule 2.

Subd. 2. Misdemeanor and Gross Misdemeanor Offenses. Misdemeanors and designated gross misdemeanors as defined by Rule 1.04(a)-(b) may be prosecuted by tab charge. A complaint must be subsequently served and filed for designated gross misdemeanors as required by Rule 4.02, subd. 5(3).

Subd. 3. Indictment Following Arrest or Complaint. The arrest of a person by arrest warrant issued in a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5(2) against a person arrested without a warrant will not preclude an indictment for the offense charged or for an offense arising out of the same conduct.

Rule 17.02 Nature and Contents

Subd. 1. Complaint. A complaint must be substantially in the form required by Rule 2.

Subd. 2. Indictment. An indictment must contain a written statement of the essential facts constituting the offense charged and be signed by the grand jury foreperson.

Subd. 3. Indictment and Complaint. For each count, the indictment or complaint must cite the statute, rule, regulation, or other provision of law the defendant allegedly violated. Error in the citation or its omission is not a ground to dismiss or reverse a conviction if the error or omission did not prejudice the defendant. Each count can charge only one offense. Allegations made in one count may be incorporated by reference in another count. An indictment or complaint may contain counts for the different degrees of the same offense, or counts for lesser or other included offenses. The same indictment or complaint may contain counts for murder and manslaughter. The indictment or complaint may allege in one count alternative theories of committing the offense or that the means by which the defendant committed the offense are unknown.

Subd. 4. Administrative Information. The indictment or complaint must contain other administrative information as authorized and published by the State Court Administrator.

Rule 17.03 Joinder of Offenses and of Defendants

Subd. 1. Joinder of Offenses. When the defendant's conduct constitutes more than one offense, each offense may be charged in the same charging document in a separate count.

Subd. 2. Joinder of Defendants. When two or more defendants are charged with the same offense, they may be tried separately or jointly at the court's discretion. To determine whether to order joinder or separate trials, the court must consider:

- (1) the nature of the offense charged;
- (2) the impact on the victim;
- (3) the potential prejudice to the defendant; and
- (4) the interests of justice.

In all cases any one or more of the defendants may be convicted or acquitted.

Subd. 3. Severance of Offenses or Defendants.

(1) Severance of Offenses. On motion of the prosecutor or the defendant, the court must sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge; or

(c) during trial, with the defendant's consent or on a finding of manifest necessity, the court determines severance is necessary to fairly determine the defendant's guilt or innocence of each offense or charge.

(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On a defendant's motion for severance from a codefendant because a codefendant's out-of-court statement refers to but is not admissible against the defendant, the court must determine whether the prosecutor intends to offer the statement as evidence during its case in chief. If so, the court must require the prosecutor to elect one of the following options:

(a) a joint trial at which the statement is not received in evidence;

(b) a joint trial at which the statement is only received in evidence after all references to the defendant have been deleted, if the statement's admission with the deletions will not prejudice the defendant; or

(c) the defendant's severance.

(3) Severance of Defendants During Trial. The court must sever defendants during trial, with the defendant's consent or on a finding of manifest necessity, if the court determines severance is necessary to fairly determine the guilt or innocence of one or more of the defendants.

Subd. 4. Consolidation of Charging Documents for Trial.

(a) The court, on the prosecutor's motion, or on its initiative, may order two or more charging documents to be tried together if the offenses and the defendants could have been joined in a single charging document.

(b) On a defendant's motion, the court may order two or more charging documents to be tried together even if the offenses and the defendants could not have been joined in a single charging document.

(c) In all cases, the procedure will be the same as if the prosecution were under a single charging document.

Subd. 5. Dual Representation. When two or more defendants are jointly charged or will be tried jointly under subdivision 2 or 4 of this rule, and two or more of them are represented by the same attorney, the following procedure must be followed before plea and trial.

(1) The court must:

(a) address each defendant personally on the record;

(b) advise each defendant of the potential danger of dual representation; and

(c) give each defendant an opportunity to question the court on the complexities and possible consequences of dual representation.

(2) The court must elicit from each defendant in a narrative statement that the defendant:

(a) has been advised of the right to effective representation;

(b) understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;

(c) has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and

(d) voluntarily waives the constitutional right to separate counsel.

(Amended effective July 1, 2015.)

Rule 17.04 Surplusage

The court on motion may strike surplusage from the charging document.

(Amended effective July 1, 2015.)

Rule 17.05 Amendment of Indictment or Complaint

The court may permit an indictment or complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced.

Rule 17.06 Motions Attacking the Charging Document

Subd. 1. Defects in Form. No charging document will be dismissed nor will the trial, judgment, or other proceedings be affected by reason of a defect or imperfection in matters of form that does not prejudice the defendant's substantial rights.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to the charging document must be made by motion under Rule 10.01, subd. 2 and may be based on the following grounds without limit:

(1) With regard to an indictment:

(a) The evidence admissible before the grand jury was not sufficient to establish an offense charged or any lesser or other included offense;

(b) The grand jury was illegally constituted;

(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;

(d) Fewer than 12 grand jurors concurred in the finding of the indictment;

(e) The indictment was not found or returned as required by law; or

(f) An unauthorized person was in the grand jury room during the presentation of evidence on the charge contained in the indictment, or during the grand jury's deliberations or voting.

(2) With regard to any charging document:

(a) The charging document does not substantially comply with the requirements prescribed by law to the prejudice of the defendant's substantial rights;

- (b) The court lacks jurisdiction over the offense charged;
- (c) The law defining the offense charged is unconstitutional or otherwise invalid;
- (d) In the case of an indictment or complaint, the facts stated do not constitute an offense;
- (e) The prosecution is barred by the statute of limitations;
- (f) The defendant has been denied a speedy trial;
- (g) There exists some other jurisdictional or legal impediment to the defendant's prosecution or conviction for the offense charged, unless provided by Rule 10.02; or
- (h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minnesota Statutes, section 609.035.

Subd. 3. Time for Motion. A motion to dismiss the charging document must be made within the time prescribed by Rule 10.03, subd. 1. At any time during the pendency of a proceeding an objection may be made to the court's jurisdiction over the offense or that the charging document fails to charge an offense.

Subd. 4. Effect of Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the charging document, the defendant must be permitted to plead if the defendant has not previously entered a plea. A plea previously entered will stand. In all cases, the defendant may continue to raise the issues on appeal if convicted after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss a charging document for a defect in the institution of prosecution or in the charging document, the court must specify the grounds on which the motion is granted.

(3) Dismissal for Curable Defect. If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3), or for a defect that could be cured or avoided by an amended or new indictment or complaint, further prosecution for the same offense will not be barred. On the prosecutor's motion made within seven days after notice of the order granting the motion to dismiss, the court must order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that may be required under Rule 6.02, subd. 1, the defendant must be released subject to such non-monetary conditions as the court deems appropriate. The specified time for such amended or new indictment or complaint must not exceed 60 days for filing a new indictment or seven days for amending an indictment or complaint or for filing a new complaint. During the seven-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or complaint's dismissal must be stayed. If the prosecutor does not make the motion within the seven-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified, the defendant must be discharged and further prosecution for the same offense is barred unless the prosecutor has appealed as provided by law, or the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor and designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will not be barred unless the court has so ordered.

(Amended effective July 1, 2015.)

Comment - Rule 17

The complaint under Rule 2.01 and the indictment under Rule 17.02, subd. 2 must contain a written statement of the essential facts constituting the offense charged. The statement of the evidence, supporting affidavits, or sworn testimony, showing probable cause required by Rule 2.01 are not a part of the indictment.

The required legal content of the complaint and indictment is set forth in Rules 2.01 and 17.02, and serves the function of informing the court of the offense(s) charged and the facts establishing probable cause. In addition to this legal information, the court requires administrative information to identify the defendant and the case, as well as additional factual information about the defendant or the status of the defendant's case to fulfill the court's statutory obligations to provide such information to other agencies. There is no requirement that the complaint or indictment be submitted to the court in any particular form or format. Rule 17.02, subd. 4 requires the State Court Administrator to identify and publish the administrative content of the complaint or indictment required by the courts. A sample complaint/indictment and a listing of the administrative content approved by the State Court Administrator will be published on the Minnesota Judicial Branch website. This flexibility will allow for e-filing of the complaint or indictment.

Except to the extent that existing statutes (Minnesota Statutes, sections 628.10, 628.12, 628.13, 628.15 to 628.18, 628.20 to 628.24, and 628.27) that govern the contents of an indictment or information are inconsistent with Rule 17.02, they are not abrogated by these rules. So, to the extent they are consistent with the provisions of Rule 17.02, they may be followed in drawing complaints and indictments under these rules.

Rule 17.02, subd. 3 permits counts to be used but prohibits duplication by charging more than one offense in a single count.

*Rule 17.03, subd. 5 sets forth procedures for representing two or more defendants who are jointly charged or tried, as set forth in *State v. Olsen*, 258 N.W.2d 898 (Minn. 1977). That case requires defendants to clearly and unequivocally waive their constitutional right to separate counsel. If a record is not made as required or if the record fails to show that the procedures were followed in every important respect, *State v. Olsen*, supra, places the burden on the prosecutor to establish beyond a reasonable doubt that a prejudicial conflict of interest did not exist.*

*Rule 17.05 leaves district courts to determine whether the defendant will be substantially prejudiced by an amendment and what steps, if any, including a continuance, may be taken to remove any prejudice that might otherwise result from an amendment. Rule 17.05 does not govern a complaint's amendment after a mistrial and before the start of the second trial. Rather, Rule 3.04, subd. 2, which provides for the free amendment of the complaint, controls. *State v. Alexander*, 290 N.W.2d 745 (Minn. 1980).*

Grounds for a motion for dismissal of an indictment only and for a motion for dismissal of an indictment or complaint are set forth in Rule 17.06, subd. 2(1) and (2). These grounds are not intended to be exclusive.

Rule 17.06, subd 2(1)(a) is available because Rule 18.04, subd. 1 requires a record to be made of the evidence taken before the grand jury. (See also the provisions of Rule 18.04, subd. 1 for the conditions in which the record may be disclosed to the defendant. And see also Rule 18.05, subd. 2.) Upon such a motion, the admissibility and sufficiency of evidence pertaining to indictments is governed by Rules 18.05, subd. 1, and 18.05, subd. 2.

Rule 17.06, subd. 2(2)(f) leaves to judicial decision the constitutional or other requirements of a speedy trial as well as the effect of denying a defendant's demand for trial under Rules 11.08 and 11.09 and Rule 6.06.

By Rule 10.03, subd. 1, a motion to dismiss an indictment or complaint must be served no later than three days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases, by Rule 17.06, subd. 3, a motion to dismiss must be served at least three days before the pretrial conference or, at least three days before the trial if no pretrial conference is held, unless this time is extended for good cause.

The first sentence of Rule 17.06, subd. 4 contemplates that a defendant may plead not guilty and also make a motion to dismiss if the defendant wishes.

To make the basis for dismissal based on a defect in the institution of the prosecution or in the indictment or complaint apparent, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3) for misdemeanor cases, or for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within seven days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint. On such a motion, the court must continue the case for no more than seven days pending the filing of a new complaint, or amending of the complaint or indictment, or for 60 days pending the filing of a new indictment. This filing requirement for a new or amended complaint is not satisfied until the complaint is signed by the judge or other appropriate issuing officer and then filed with the court administrator.

During the time for such a motion and during any continuance, dismissal of the charge is stayed. In a misdemeanor case, the defendant must not be kept in custody. Rule 17.06, subd. 4(3), does not govern dismissals for defects that could not be cured at the time of dismissal by a new or amended complaint or indictment. Therefore, when a complaint or indictment has been dismissed because of insufficient evidence to establish probable cause, the prosecutor may re-prosecute if further evidence is later discovered to establish probable cause. Also under Rule 4.02, subd. 5(3), even if prosecution is reinstated within the specified period after having been dismissed for failure to file a timely complaint, a summons rather than a warrant must be issued to secure the defendant's appearance in court.