

Notes to accompany rules 4, 4A and 4B for public comment 9/30/16.

The committee appreciates the responses provided by the legal community. In our continued attempts to provide the best practices for all courts in criminal procedures, the committee has made changes to the proposed rule 4 and also now publishes proposed rules 4A and 4B.

The committee proposes that the root rule: rule 4, would apply to the usual circumstance where a criminal case is commenced by the filing of an information. Rule 4A would cover the very unusual circumstances where a case is initiated by the filing of an indictment. Rule 4B would govern cases initiated by the filing of a citation.

While this does increase the number of individual rules, it reduces the complexity and verbiage of those rules. The committee feels that this approach provides better guidance to all users, especially self-represented litigants who are far more numerous in cases governed by these rules, as opposed to the civil rules.

The committee received multiple comments reflecting the requirement that an information include the names of witnesses. This requirement exists in the current rule. However, the committee agrees that inclusion on the face of the information is not necessary and therefore the current iteration of the proposed rules do not include that requirement.

The bulk of the comments were directed at what data must be included on cases initiated by information. The committee is mindful of the requirements that this places on the executive branch in preparing filings. As outlined below, the committee has streamlined some of the requirements from the previous proposed rule. However, at the end of the day the prosecution must provide support for a request for a warrant under Rule 6, or subsequent processes. The required information is relevant and useful to the court in making those decisions.

The current iteration of the proposed rules do not require a probable cause statement on cases initiated by citations, or on class B or lower misdemeanors where the prosecutor is not seeking a warrant under Rule 6. Moreover, the arrest related information (booking numbers, incarceration status, etc) are available most readily to the executive branch, i.e., the law enforcement agency initiating the charges, which should then be available to prosecutors.

The Committee recognizes and respects that there are varied processes for screening and presentment of cases to courts. To that end, the Committee has indicated that the required data associated with the information can be included in any other documents (affidavits, separate probable cause statements, etc) that are filed with the information.

The committee appreciates the engagement of practitioners in this process. We hope that you will find that the changes address many of the concerns expressed and look forward to continued participation as we strive to improve and provide consistency for all participants in the criminal courts.