

Rule 11. The Omnibus Hearing**11.01 Time and Place of Hearing**

In felony and gross misdemeanor cases, if the defendant has not pled guilty, an Omnibus Hearing must be held.

(a) The Omnibus Hearing must start within 42 days of the Rule 5 appearance if it was not combined with the Rule 8 hearing, or within 28 days of the Rule 5 appearance if it was combined with the Rule 8 hearing.

(b) The Omnibus Hearing must be held in the district where the alleged offense occurred.

11.02 Scope of the Hearing

If the prosecutor or defendant demands a hearing under Rule 8.03, the court must conduct an Omnibus Hearing and hear all motions relating to:

- (a) Probable cause;
- (b) Evidentiary issues;
- (c) Discovery;
- (d) Admissibility of other crimes, wrongs or bad acts under Minn. R. Evid. 404(b);
- (e) Admissibility of relationship evidence under Minnesota Statutes, section 634.20;
- (f) Admissibility of prior sexual conduct under Minn. R. Evid. 412;
- (g) Constitutional issues;
- (h) Procedural issues;
- (i) Aggravated sentence;
- (j) Any other issues relating to a fair and expeditious trial.

11.03 General Procedures

(a) The court may receive evidence offered by the prosecutor or defendant on any omnibus issue. A party may cross-examine any witness called by any other party.

(b) Before or during the Omnibus Hearing or any other pretrial hearing, witnesses may be sequestered or excluded from the courtroom.

11.04 Omnibus Motions**Subd. 1. Probable Cause Motions.**

(a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) The prosecutor and defendant may offer evidence at the probable cause hearing.

(c) The court may find probable cause based on the complaint or the entire record, including reliable hearsay. Evidence considered on the issue of probable cause is subject to the requirements of Rule 18.05, subd. 1.

Subd. 2. Aggravated Sentence Motion.

(a) If the prosecutor gave notice under Rule 7.03 or 19.04, subd. 6 of intent to seek an aggravated sentence, the court must determine whether the law and proffered evidence support an aggravated sentence. The court must also determine whether to conduct a unitary or bifurcated trial.

(b) In deciding whether to bifurcate, the court must determine whether the evidence supporting an aggravated sentence is otherwise admissible in the guilt phase of trial and whether a unitary trial would unfairly prejudice the defendant. The court must order a bifurcated trial if the evidence supporting an aggravated sentence includes evidence otherwise inadmissible at the guilt phase of the trial or if that evidence would unfairly prejudice the defendant in the guilt phase.

(c) If the court orders a unitary trial, the court may order separate final arguments on the issues of guilt and the aggravated sentence.

(Amended effective July 1, 2015.)

11.05 Pretrial Conference

The Omnibus Hearing may also include a pretrial conference to determine whether the case can be resolved before trial.

11.06 Continuances

The court may continue the hearing or any part of the hearing for good cause related to the case.

11.07 Determination of Issues

The court must make findings and determinations on the omnibus issue(s) in writing or on the record within 30 days of the issue(s) being taken under advisement.

(Amended effective July 1, 2015.)

11.08 Pleas

(a) The defendant may enter a plea to the charged offense or to a lesser included offense as permitted in Rule 15 any time after the commencement of the Omnibus Hearing.

(b) Entry of a plea other than guilty does not waive any jurisdictional or other issue raised for determination in the Omnibus Hearing.

11.09 Trial Date

(a) If the defendant enters a plea other than guilty, a trial date must be set.

(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date.

Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

(Amended effective July 1, 2015.)

11.10 Record

Subd. 1. Record. A verbatim record must be made.

Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:

(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient showing of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The transcript must be provided to the prosecutor without prepayment.

(c) Transcripts provided to counsel must be filed with the court.

(d) A party offering video or audio evidence must not be required by the court to provide a transcript of the exhibit as a prerequisite to admissibility. If the party provides a transcript of the exhibit and the court admits that transcript as an illustrative exhibit, the transcript becomes part of the record, used for illustrative purposes with that exhibit only. The court reporter must not transcribe video or audio exhibits.

Subd. 3. Documents and Exhibits. All documents and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.

(Amended effective July 1, 2015; amended effective March 1, 2020.)

Comment - Rule 11

If a probable cause motion is made, the court must base its probable cause determination upon the evidence set forth in Rule 18.05, subd. 1. In State v. Florence, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976), the Supreme Court discussed the type of evidence that may be presented and considered on a motion to dismiss the complaint for lack of probable cause. Nothing in that case or in the rule prohibits a defendant from calling any witness to testify for the purpose of showing an absence of probable cause. In determining whether to dismiss a complaint under Rule 11.04 for lack of probable cause, the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest. Rather, under Florence, the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial.

By the Omnibus Hearing, the prosecution will have given the Rasmussen and Spreigl notices; the Rasmussen hearing will have been either waived or demanded; the discovery required without order of court will have been completed; and pretrial motions will have been served. (In the case of an indictment the pretrial motions should include any motion to suppress based on the disclosures contained in the Rasmussen notice under Rule 19.04, subd. 6).

The purpose of the Omnibus Hearing is to avoid a multiplicity of court appearances on these issues with a duplication of evidence and to combine all of the issues that can be disposed of without trial into one appearance. Early resolution of motions provides for more efficient handling of criminal cases at subsequent stages. This includes suppression motions, evidentiary motions, and nonevidentiary motions such as motions to disclose the identity of an informant or to consolidate or sever trials or co-defendants. Early resolution of these motions also helps to focus the lawyers' attention on a smaller number of witnesses, including law enforcement officers and victims of crimes. When such motions are resolved early, uncertainty with respect to many significant issues in a case are removed. This early resolution of motions also permits timely and meaningful pretrial dispositional conferences at which time the parties can engage in significant plea agreement discussions. Setting a firm trial date and commencing a trial on that date are also important factors in minimizing delays.

By Rule 11.02 the court must also hear all motions made by the parties under Rule 10. A failure to raise known issues at the Omnibus Hearing waives that issue except lack of jurisdiction or failure

of the complaint or indictment to state an offense, unless the court grants an exception to the waiver (Rule 10.03).

Rule 11.02 specifically permits a motion to dismiss a complaint for lack of probable cause, but does not permit a motion to dismiss an indictment upon this ground.

The court must also on its initiative under Rule 11.02 ascertain and hear any other issues that can be heard and disposed of before trial and any other matters that would promote a fair and expeditious trial. This would include requests or issues arising respecting discovery (Rule 9), evidentiary issues arising from the Spreigl notice (Rules 7.02, 19.04, subd. 6), or other evidentiary issues, and expressly permits a pretrial dispositional conference if the court considers it necessary. See Fed. R. Crim. P. 17.1. If such resolution is not possible, the conference may be used to determine the nature of the case so that further hearings or trial may be scheduled as appropriate. The use of such dispositional conferences is commendable and highly recommended by the Advisory Committee. To assure that the pretrial dispositional conference portion of the Omnibus Hearing is meaningful, trial courts should insist on timely discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1.

If the prosecutor has given notice under Rule 7.03 or 19.04, subd. 6(3) of intent to seek an aggravated sentence, Rule 11.04 requires the court to have a hearing to determine any pretrial issues that need to be resolved in connection with that request. This could include issues as to the timeliness of the notice under Rule 7.03 or 19.04, subd. 6. The court must determine whether the proposed grounds legally support an aggravated sentence and whether or not the proffered evidence is sufficient to proceed to trial. The rule does not provide a standard for determining insufficiency of the evidence claims and that is left to case law development. If the aggravated sentence claim will be presented to a jury, the court must also decide whether the evidence will be presented in a unitary or a bifurcated trial and the rule provides the standards for making that determination. Even if a unitary trial is ordered for the presentation of evidence, the rule recognizes that presentation of argument on an aggravated sentence during the guilt phase of the proceedings may unduly prejudice a defendant. The rule therefore allows the court to order separate final arguments on the aggravated sentence issue, if necessary, after the jury renders its verdict on the issue of guilt.

Under State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn. 1980), if the prosecutor intends to impeach the defendant or any defense witness with evidence of prior convictions, the prosecutor must request a pretrial hearing on the admissibility of such evidence. If possible this issue should be heard at the Omnibus Hearing. See Rules 9.01, subd. 1(5) and 9.02, subd. 1(8) as to the reciprocal duties of the prosecutor and defense counsel to disclose the criminal records of the defendant and any defense witnesses. As to the standards for determining the admissibility of the impeachment evidence, see Minn. R. Evid. 609, State v. Jones, 271 N.W.2d 534 (Minn. 1978) and State v. Brouillette, 286 N.W.2d 702 (Minn. 1979).

By Rule 11.06 the Omnibus Hearing or any part may be continued if necessary to dispose of the issues presented. At any conference portion of an Omnibus Hearing it is permissible under Rule 11.06 to continue the evidence suppression portion of the Omnibus Hearing until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. Such a continuance would be "for good cause related to the case" under Rule 11.06, and under that rule the court could enter an order continuing both the Omnibus Hearing and the court's decision on the evidentiary issues until the day of trial. Other grounds may also support a continuance as long as the court finds that the continuance is justified under the rule. However, the court should not as a general rule or practice bifurcate the Omnibus Hearing or delay the hearing or any part of it until the day of trial when that is not justified by the circumstances of the case. To do so violates the purpose of these rules. See Minnesota Statutes, section 611A.033, regarding the prosecutor's

duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.

Rule 11.07 requires appropriate findings for the determinations made on the Omnibus Hearing issues.

*The intent of the Omnibus Hearing rule is that all issues that can be determined before trial must be heard at the Omnibus Hearing and decided before trial. Consequently, when the Omnibus Hearing is held before a judge other than the trial judge, the trial judge, except in extraordinary circumstances will adhere to the findings and determinations of the Omnibus Hearing judge. See *State v. Coe*, 298 N.W.2d 770, 771-72 (Minn. 1980) and *State v. Hamling*, 314 N.W.2d 224, 225 (Minn. 1982) (where this issue was discussed, but not decided).*

Rule 11.08 further provides that the defendant may enter a plea including a not guilty plea at the first Omnibus Hearing appearance. This assures that if a defendant wishes to demand a speedy trial under Rule 11.09, the running of the time limit for that will not be delayed by continuing the plea until the continued Omnibus Hearing. If the trial date is continued, see Minnesota Statutes, section 611A.033, regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of the continuance.

*For good cause the trial may be postponed beyond the 60-day time limit upon request of the prosecutor or the defendant or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See *McIntosh v. Davis*, 441 N.W.2d 115, 120 (Minn. 1989). Even if good cause exists for postponing the trial beyond the 60-day time limit, the defendant, except in exigent circumstances, must be released, subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1, if trial has not yet commenced within 120 days after the demand is made and the not guilty plea entered. Other sanctions for violation of these speedy trial provisions are left to case law. See *State v. Kasper*, 411 N.W.2d 182 (Minn. 1987) and *State v. Friberg*, 435 N.W.2d 509 (Minn. 1989).*

Rule 11.09 does not attempt to set arbitrary time limits (other than those resulting from the demand), because they would have to be circumscribed by numerous specific exclusions (See ABA Standards, Speedy Trial, 2.3 (Approved Draft, 1968)) which are covered in any event by the more general terms of the rule. See ABA Standards, Speedy Trial, 4.1, Pre-Trial Release, 5.10 (Approved Drafts, 1968) in which the consequences are set forth.

*The consequences and the time limits beyond which a defendant is considered to have been denied the constitutional right to a speedy trial are left to judicial decision. See *Barker v. Wingo*, 407 U.S. 514, 519-36 (1972). The constitutional right to a speedy trial is triggered not when the plea is entered but when a charge is issued or an arrest is made. *State v. Jones*, 392 N.W.2d 224, 235 (Minn. 1986). The existence or absence of the demand under Rule 11.09 provides a factor that may be taken into account in determining whether the defendant has been unconstitutionally denied a speedy trial. See *Barker v. Wingo*, *supra*.*