

Rule 2. Complaint

2.01 Contents; Before Whom Made

Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, except as modified by Rule 6.01, subd. 4. The probable cause statement can be supplemented by supporting affidavits, statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.

Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. If sworn witness testimony is taken under subdivision 3, the oath must be administered by a judge, but the oath may be administered by telephone, ITV, or similar device.

Subd. 3. Witness Testimony; How Made. If the court takes sworn witness testimony, the court must note that fact on the complaint. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed.

Subd. 4. Probable Cause Determination. The judge must determine whether probable cause exists to believe an offense has been committed and the defendant committed it. When the alleged offense is punishable by a fine only, the probable cause determination can be made by the court administrator if authorized by court order.

2.02 Approval of Prosecutor

A complaint must not be issued without the prosecutor's signature, unless a judge certifies on the complaint that the prosecutor is unavailable and that issuance of the complaint should not be delayed.

(Amended effective July 1, 2015; amended effective October 1, 2016.)

Comment - Rule 2

Rule 2.01 notes an exception to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation.

Even if affidavits, testimony, or other reports supplement the complaint, the complaint must still include a statement of the facts establishing probable cause. Under this rule, the complaint and any supporting affidavits can be sworn to before a court administrator or notary public, or signed under penalty of perjury pursuant to Minn. Stat., section 358.116. The documents can then be submitted to the judge or judicial officer by any method permitted under the rule and the law enforcement officer or other complainant need not personally appear before the judge. However, if sworn oral testimony is taken to supplement the complaint, it must be taken before the judge and cannot be taken before a court administrator or notary public.

The prosecutors referred to in Rule 2.02 are those authorized by law to prosecute the offense charged. See Minnesota Statutes, section 484.87 (allocating prosecutorial responsibilities amongst city, township, and county prosecutors); Minnesota Statutes, sections 8.01 and 8.03 (Attorney General); and Minnesota Statutes, section 388.051 (County Attorney).

Rule 2.02 does not define the remedy available when a local prosecutor refuses to approve a complaint.

Because the complaint is accessible to the public, and documents supporting the statement of probable cause can contain irrelevant material that is injurious to innocent third persons, as well as material prejudicial to the defendant's right to a fair trial, it is recommended that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material be omitted.