

**Rule 7. Notice by Prosecutor of Omnibus Issues, Other Offenses Evidence, and Intent to Seek Aggravated Sentence****7.01 Notice of Omnibus Issues**

(a) In any case where a right to a jury trial exists, the prosecutor must notify the defendant or defense counsel of:

(1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping;

(2) any confessions, admissions, or statements in the nature of confessions made by the defendant;

(3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or

(4) any evidence of lineups, show-ups, or other procedures used to identify the defendant or any other person.

(b) In felony and gross misdemeanor cases, notice must be given in writing on or before the date set for the defendant's initial appearance in the district court under Rule 5.05.

(c) In misdemeanor cases, notice must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or seven days before trial if no pretrial conference is held.

(d) Written notice may be served:

(1) personally on the defendant or defense counsel;

(2) by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there;

(3) by ordinary mail sent to defense counsel's business address or left at this address with a person of suitable age and discretion working there; or

(4) by electronic means as authorized or required by Rule 14 of the General Rules of Practice for the District Courts.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

**7.02 Notice of Other Offenses**

**Subd. 1. Notice of Other Crime, Wrong, or Act.** The prosecutor must notify the defendant or defense counsel in writing of any crime, wrong, or act that may be offered at the trial under Minn. R. Evid. 404(b). No notice is required for any crime, wrong, or act:

(a) previously prosecuted,

(b) offered to rebut the defendant's character evidence, or

(c) arising out of the same occurrence or episode as the charged offense.

**Subd. 2. Notice of a Specific Instance of Conduct.** The prosecutor must notify the defendant or defense counsel in writing of the intent to cross-examine the defendant or a defense witness under Minn. R. Evid. 608(b) about a specific instance of conduct.

**Subd. 3. Contents of Notice.** The notice required by subdivisions 1 and 2 must contain a description of each crime, wrong, act, or specific instance of conduct with sufficient particularity to enable the defendant to prepare for trial.

**Subd. 4. Timing.**

(a) In felony and gross misdemeanor cases, the notice must be given at or before the Omnibus Hearing under Rule 11, or as soon after that hearing as the other crime, wrong, act, or specific instance of conduct becomes known to the prosecutor.

(b) In misdemeanor cases, the notice must be given at or before a pretrial conference under Rule 12, if held, or as soon after the hearing as the other crime, wrong, act, or specific instance of conduct becomes known to the prosecutor. If no pretrial conference occurs, the notice must be given at least seven days before trial or as soon as the prosecutor learns of the other crime, wrong, act, or specific instance of conduct.

(Amended effective September 1, 2011.)

**7.03 Notice of Intent to Seek an Aggravated Sentence**

The prosecutor must give written notice at least seven days before the Omnibus Hearing of intent to seek an aggravated sentence. Notice may be given later if permitted by the court on good cause and on conditions that will not unfairly prejudice the defendant. The notice must include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence.

**7.04 Completion of Discovery**

Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecutor and defendant must complete the discovery that is required by Rules 9.01 and 9.02 to be made without the necessity of an order of the court. Rule 9.04 governs completion of discovery for misdemeanor cases.

***Comment - Rule 7***

*Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 553-54, 141 N.W.2d 3, 13 (1965)) of evidence obtained from the defendant and of identification procedures must be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after the first appearance in the court under Rule 5) so that the defendant may determine at the time of the Rule 8 appearance whether to waive or demand a Rasmussen hearing (Rule 8.03). If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) no more than 28 days later. It is permissible for the prosecutor to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.*

*In misdemeanor cases under Rule 7.01, the Rasmussen notice of evidence obtained from the defendant and of identification procedures may be given at arraignment, and in such a case the waiver or demand of a hearing takes place at that time (Rule 5.06, subd. 4). However, since misdemeanor arraignments are often within one day or even a few hours of an arrest, a prosecutor may not have sufficient knowledge of the case to issue a Rasmussen notice at that time. Rather than discourage such prompt arraignments, this rule provides that the Rasmussen notice may be served as late as the pretrial conference, if held, or at least seven days before trial if no pretrial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held. Even where no notice is required, the discovery permitted by Rule 9.04 will give the defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.*

*If the notice required by Rule 7.01 is not actually received, the court may grant a continuance to prevent any prejudice due to surprise.*

*Rule 7.02 requires that the Spreigl notice be given on or before the date of the Omnibus Hearing (Rule 11) in order that any issues that may arise as to the admissibility of the evidence of these offenses at trial may be ascertained and determined at the Omnibus Hearing. If the prosecutor learns of any such offenses after the Omnibus Hearing, the prosecutor must immediately give notice to the defendant.*

*Rule 7.03 establishes the notice requirements for a prosecutor to initiate proceedings seeking an aggravated sentence in compliance with *Blakely v. Washington*, 542 U.S. 296, 301-305 (2004). See Rule 1.04(d) as to the definition of "aggravated sentence." See also the comments to that rule. The written notice required by Rule 7.03 must include not only the grounds or statute relied upon, but also a summary statement of the supporting factual basis. However, there is no requirement that the factual basis be given under oath. This rule balances the competing interests of the parties: the prosecution may not have sufficient evidence at charging to make the *Blakely* decision and the defense requires notice as early as possible to prepare an adequate defense. The rule recognizes that it may not always be possible to give notice by seven days before the Omnibus Hearing and the court may permit a later notice for good cause so long as the later notice will not unfairly prejudice the defendant. In making that decision the court can consider whether a continuance of the proceedings or other conditions would cure any unfair prejudice to the defendant. Pretrial issues concerning a requested aggravated sentence will be considered and decided under the Omnibus Hearing provisions of Rule 11.*

*Rule 7.04 provides that discovery required under Rule 9 in felony and gross misdemeanor cases must be completed by the prosecution and defense before the Omnibus Hearing (Rule 11). This will permit the court to resolve any issues that may have arisen between the parties with respect to discovery (Rule 9.03, subd. 8) at the Omnibus Hearing. It may also result in a plea of guilty at the Omnibus Hearing (Rule 11.08). All notices under Rule 7 must also be filed with the court (Rule 33.04). The discovery requirements for misdemeanor cases are set forth in Rule 9.04.*