



**Honorable Juan B. Colás**  
**Presiding Judge, Dane County Circuit Court**  
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Madison, WI 53703-3291

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Ashley Sanders, Clerk

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June 28, 2016

BY HAND DELIVERY

Ismael Ozanne  
Dane County District Attorney  
215 S. Hamilton St.  
Madison, WI 53703

Re: Request to Rescind Rule 206 Regarding Bail Hearings

Dear District Attorney Ozanne:

I returned from vacation yesterday to find your June 20<sup>th</sup> letter asking that the recently amended Rule 206, providing for bail hearings for uncharged persons in jail, be rescinded. Deputy District Attorney Matt Moeser had also asked by e-mail on June 22<sup>nd</sup> that your office's request for a second delay in the effective date of the amendment be on the agenda for the June 30<sup>th</sup> judges meeting. The rule is now scheduled to be effective on July 1<sup>st</sup>.

I am declining both requests. We may need to revisit the rule after we have some experience with it and after creative, good-faith efforts have been made to meet its requirements while protecting the important interests you identify. There is no indication in your letter of what efforts have been made in the three months since the rule was first publicly proposed to prepare for the changes it makes.

I feel I must correct the unintended impression your letter may leave that there was no time or opportunity for the concerns you raise to be considered, or for your office to prepare for the change.

The proposed rule was first e-mailed to you and several of your staff on March 14<sup>th</sup> accompanying the agenda for the March 23, 2016 Criminal Division meeting. Your office did not offer any objections, comments or suggestions before or after the meeting. No one from your office attended the meeting, advised that spring break would

prevent a representative from attending or asked that the agenda item be deferred to a future meeting on account of spring break.

On May 17th the proposed rule was again e-mailed to you and several of your staff with the agenda for the general judges meeting on May 26, 2016. Again there was no comment, objection or suggestions before the meeting. You personally attended the May 26<sup>th</sup> meeting and raised no concerns and the change was approved by the judges. It was not until June 2<sup>nd</sup>, the day after the rule took effect, that you approached me and asked that it be suspended. That was the first notice of your office's concerns. In response I issued an order staying the effective date to July 1<sup>st</sup>, "to allow the District Attorney's Office additional time to adapt its practices."

The rule ensures that uncharged suspects held in the jail who cannot afford the statutory bail amount or are not eligible for it will have a prompt bail review hearing. That is currently available upon request to suspects who have attorneys to request it. The rule will help lower the jail population, reduce jail length of stay and lessen the effects on employment and family of being held in jail awaiting a charging decision. These are all goals we share.

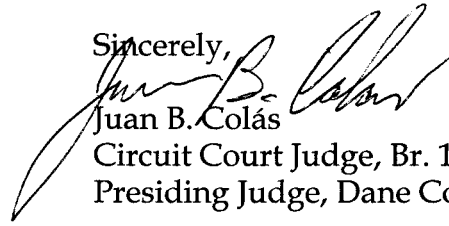
It is true, as your letter states, that delaying a bail hearing avoids creating a court record for suspects your office eventually decides not to charge. Are we willing to accept that the price the poor must pay to avoid a court record is extra time in jail for an offense they will not be charged with? Perhaps there are better ways to identify the cases likely to be declined more quickly so that both the unnecessary jail time and the unnecessary court record are avoided.

Of course, the rights and needs of victims must also be considered and the court relies upon accurate information being presented by the attorneys appearing before it. Perhaps there are ways to expedite the basic information needed for a bail hearing and for victim or witness contact in cases where that is necessary. That information may be less than the full reports your office may need to make a final charging decision.

Every Sunday morning the duty judge reviews summary reports of arrests on Friday and Saturday to determine whether there is probable cause to support the arrest. For each case we review a sheet prepared by an officer that lists the tentative possible charges, identifies the arresting or investigating officer and the victim if there is one, as well as other witnesses and provides either a summary of the events or, for some agencies, the entire report of the arrest. (At least one police agency has converted the entire form to an electronic one). Supplementing a form already in use with a criminal history and additional pertinent information may be all that is needed for a bail review in the majority of cases.

The judiciary has been an active participant in addressing criminal justice policy issues in our community and we will continue to be. As we implement this new rule we are willing to work with your office and law enforcement to protect the rights of uncharged persons, victims and public safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan B. Colás", is written over the typed name.

Juan B. Colás

Circuit Court Judge, Br. 10

Presiding Judge, Dane County

JBC:jc

Copies: Dane County Chiefs of Police