



**DANE COUNTY
DISTRICT ATTORNEY
ISMAEL R. OZANNE**



June 20, 2016

The Honorable Juan B. Colás
Presiding Judge, Dane County Circuit Court
Dane County Courthouse
215 South Hamilton Street
Room 8103
Madison WI 53703

COPY

RE: Request to Rescind Amended Local Court Rule 206

Dear Judge Colás:

Thank you very much for your decision to suspend the implementation of Amended Local Court Rule 206 ("Amended Rule"). Although I agree very strongly with efforts to reduce unnecessary pre-charging incarceration, especially as part of our county's continuing efforts to address racial disparities in the criminal justice system, I believe that the Amended Rule should be rescinded while some of the unintended consequences are more fully considered.

Although I am sure you are familiar with the prior version of Rule 206 ("Prior Rule") and the Amended Rule, I am reproducing the relevant portions here regarding initial eligibility for bail hearings:

Prior Rule:

206: Bail Hearings

In-custody bail hearings before the initial appearance court commissioner will be held upon request according to the following schedule:

- *A defendant booked into jail before noon Monday is eligible for a bail hearing Wednesday.*
- *A defendant booked into jail before noon Wednesday is eligible for a bail hearing Thursday.*
- *A defendant booked into jail before noon Thursday is eligible for a bail hearing Friday.*
- *A defendant booked into jail before noon Friday is eligible for a bail hearing Monday.*
- *A defendant booked into jail before noon Sunday is eligible for a bail hearing Tuesday.*

Amended Rule:

206: Bail Hearings

Except where the prosecution and defendant otherwise agree, an in-custody bail hearing before the initial appearance court commissioner for a person with no other holds will be held as follows:

- *A defendant booked before 8:00 AM Monday is eligible for a bail hearing on Tuesday.*
- *A defendant booked before 8:00 AM Tuesday is eligible for a bail hearing on Wednesday.*
- *A defendant booked before 8:00 AM Wednesday is eligible for a bail hearing on Thursday.*
- *A defendant booked before 8:00 AM Thursday is eligible for a bail hearing on Friday.*
- *A defendant booked before 8:00 AM Friday is eligible for a bail hearing on Monday.*

There are two important changes created by the Amended Rule. First, it eliminates the request requirement. Second, it establishes 8:00 AM of a certain day as the cut-off for bail hearing eligibility. I want to first address this latter change. This is certainly something I support as it helps create certainty in the minds of victims about when a defendant may have a court date. It is the elimination of the request requirement and the continued use of the word "eligible" which concerns me.

When I reviewed the initial draft of Amended Rule, I did not realize that eligibility for a bail hearing would now become a mandate that a bail hearing actually occur. The Amended Rule, as the Dane County Court Commissioners apparently intend to interpret it, drastically alters Dane County practices and I am concerned that the issue was not fully considered at either the Criminal Judges' meeting (held during Spring Break when no representatives from my office could attend and only three of the six Criminal Judges could attend) or at the full Judges' meeting in May. Prior to the adoption of the Amended Rule, any in-custody **suspect** (and that word's significance will be clear shortly) received a mandatory bail hearing or initial appearance on Tuesday or Friday, absent any other holds. Suspects could receive bail conditions upon request of an attorney, but a suspect not held for other reasons was guaranteed a hearing on one of those two days.

The Amended Rule – as interpreted – makes bail hearings mandatory for certain suspects, Monday through Friday. This creates several problems:

- **Creation of Public Court Record Entries for Suspects Prior to Charging.** Every suspect who has a bail hearing, even if my office eventually declines charges, will have Group File case numbers. This means that a suspect might be arrested on a misdemeanor disorderly conduct charge, be unable to post \$150, have a bail hearing while my office waits for police reports to arrive or for an attorney to review those reports, get out on bail, and then find out his case was declined. I am concerned that this will create unnecessary records of arrests and bail hearings that will be used as reasons to bar people from housing and employment.
- **Inability to Communicate With Crime Victims.** As a general rule, my office does not receive police reports until after a law enforcement agency has booked a suspect into the Dane County Jail. In some cases, we may not receive reports from a weekend arrest until Tuesday morning or from a Monday arrest until Wednesday morning. This means that my office may lack the time not only to prepare and file criminal complaints in an increasing number of cases; we will lack the time to identify and communicate with crime victims regarding bail issues, safety planning, and the criminal justice process.
- **Accurate Information at Bail Hearings.** My attorneys are generally in a position, even at bail hearings under the current system, to provide court commissioners with information regarding the basic facts of each case, likely charges, a suspect's prior criminal history and record of missed court appearances (if either exist), as well as bail recommendations that include accurate identifications of any victims and that are tailored to the case. If assistant district attorneys no longer have time to review this information prior to bail hearings, assuming they receive it, they will be less able to effectively represent the public at these hearings.

These last two points are very important. In our local justice system, the District Attorney's Office functions to communicate salient information to court commissioners regarding the factors they should consider in setting both monetary and non-monetary conditions of bail. Although some suspects may accurately report certain aspects of their background voluntarily, are we really prepared to prioritize rapid bail hearings over accurate information in determining what bail conditions are appropriate? Should not victims and the public receive the benefit of a prosecutor who is appropriately informed to address bail conditions and bail risks, and to receive a decision from a magistrate who is presented with a full factual background? It is trite to suggest that police departments should simply provide us with information sooner or that we should work faster. We repeatedly have worked with law enforcement agencies to streamline the process of referring cases to our office but there is a limit to how fast that can occur and how fast, once a case is referred, attorneys, victim specialists, and paralegals in my office can work. I am sending a copy of this letter to the Dane County Chiefs of Police because I believe that they will also acknowledge that their agencies right now do work as efficiently as possible to provide reports to my office when their agencies make custodial arrests.

I would like to specifically address some of the dangers created by the Amended Rule in cases involving sexual violence, stalking, and intimate partner violence. *The 2010 National Intimate Partner and Sexual Violence Survey*, conducted by the National Center for Injury Prevention and Control and the Centers for Disease Control and Prevention, noted that offenders may become more dangerous to their victims after victims report crimes. As you may know, the City of Madison Police Department and several other agencies in Dane County currently use a lethality risk assessment tool as part of domestic violence arrests. My office considers that tool in prioritizing our contacts with victims and in advocating for their safety. My office also works with victims, when we are able to, to help them plan to remove belongings from residences they believe to be unsafe, to explain the criminal courts process, and to do what we can to maximize victims' safety. These efforts take time and the Amended Rule does not allow for this important and meaningful activity to occur.

The Amended Rule represents a laudable attempt to create equality for suspects in criminal cases who are held on felony offenses or who cannot post cash bail based upon the misdemeanor bond schedule. I absolutely do not think that anyone who supported the changes to Rule 206 did so out of insensitivity to victims or due to a lack of concern for public safety. To the extent that I and members of my office did not raise these issues until now, I certainly express regret that I did not strongly advocate against the Amended Rule earlier. At the same time, I think that the changes to Rule 206 elevated rapid bail determinations over equally important criminal justice goals and that those changes can and should easily be undone. If I believed the only impact would be to my office's workflow and the use of my employees' time, I would delay writing this letter in the hopes that my office would be able to make these changes work. It is only because I am so concerned about the issues I have identified that I am asking the judges and county criminal justice system as a whole to revisit this issue and to develop a new process that will protect the public and the rights of suspects.

Sincerely,



Ismael R. Ozanne
District Attorney

cc: Judge William E. Hanrahan, Presiding Judge, Criminal Division
Dane County Chiefs of Police