



Rebecca Krull, Clerk
Richie Stiles-Riddle, Secretary

Judge Ellen K. Berz
DANE COUNTY CIRCUIT COURT, BRANCH 11
215 S. Hamilton Street, Room 5103
Madison, Wisconsin 53703-3292
Telephone: (608) 266-4377
Facsimile: (608) 267-4151



Jennifer Poirior, Court Reporter

July 13, 2016

Attorney Beverly Jambois
Jambois Law Office, LLC
P.O. Box 520
Sun Prairie, WI 53590-0520

Dear Attorney Jambois:

I received your request for all correspondence from judges to District Attorney Ismael Ozanne from January 1, 2014 to present. My delay in responding was due to my trial calendar and my efforts to be thorough.

Please find enclosed the following documents:

- February 2, 2016 letter from Judge Nicholas McNamara
- March 11, 2016 letter from Judge Ellen Berz
- June 28, 2016 letter from Judge Juan Colas (responding to the enclosed June 20, 2016 letter from District Attorney Ozanne)

I believe these documents are responsive to your request.

Sincerely,


Judge Ellen K. Berz

Encl.



JUDGE NICHOLAS J. McNAMARA
DANE COUNTY CIRCUIT COURT, BRANCH 5

215 South Hamilton, Room 8105
Madison, Wisconsin 53703

Lisa Quinlan, Clerk
Heather Kieta, Court Reporter

Telephone: (608) 266-9095
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February 2, 2016

District Attorney Ismael Ozanne
Dane County District Attorney's Office
215 S. Hamilton, Third Floor
Madison, WI 53703

Via email: Ismael.ozanne@da.wi.gov

Dear District Attorney Ozanne:

Earlier this afternoon I had a lengthy, candid conversation with Deputy DA Corey Stephen about the changes in ADA branch assignments your office implemented last week. I understand that he has held similar meetings with the other criminal division judges. Corey was very generous with his time and very patient with my questions and comments.

Although I am sharing this letter with my colleagues because I believe we all share a common interest in matters that affect our courts, these are my own thoughts; no one else was even warned that I would send this letter; I suspect some will wish I had not. I am no longer the presiding judge of the criminal division and certainly do not speak for any group or individual Dane County judge, except myself.

I am very glad you continue to search for procedures and policies that are intended to help your office fulfill your heavy responsibilities as you cope with chronic, woeful inadequacies of assistant attorney positions, compounded by significant losses of experienced senior attorneys through retirements or transfers. I sincerely hope that your creation of a Felony Team of ADAs and reduction of branch-assigned ADAs is successful for your office and everyone involved.

I was surprised, however, that it appears there has been no consideration of how these changes will impact court scheduling and the timely resolution of felony cases. It seems rather obvious that if each branch continues to calendar felony cases as we have for the past three years, based on collaboration and cooperation with you and your staff, we all will very quickly realize extreme systemic congestion when your entire team of felony attorneys find themselves scheduled for trials and hearings in multiple branches at the same time. On the other hand, if you assume or expect we will change how we calendar felony cases, it's very surprising you would keep such assumptions and expectations to yourself; Corey had no proposals for changes in our calendaring and in fact recommended changing nothing.

On a personal level, when I reflect on the past three years of our collective efforts to improve the criminal justice system in Dane County, as someone who personally spent hundreds of hours and many weeks communicating with you and Deputy DAs Viste and Fallon, along with open discussions with clerks, defense attorneys and my fellow judges, I feel sincere disappointment in the lack of effort to collaborate in your making such significant changes.

Please don't interpret these comments as a challenge to your authority to make staff or policy changes in your office as you see fit. My personal disappointment is not based on a confused and incorrect opinion that you should in any sense obtain permission from the judiciary or any person or entity in performing your Constitutional duties as you choose. Last Spring, when the judges announced our intention to return to random assignment of criminal cases, contrary to your request, I drafted a public statement that included the following:

By design, the People of Wisconsin and Dane County have entrusted the substantial responsibilities of criminal justice to independent institutions and agencies. Separate, equal branches of government create natural and necessary checks and balances. Fragmented at times, interdependent always, when our criminal justice system works properly our citizens and communities all enjoy the benefits of safety and order without sacrificing liberty and freedom.

I still believe in these core principles and realities.

Moreover, I readily admit that I am not a time management or human resources expert. I also have never worked in a prosecutor's office. The changes you implemented last week may be the very best way to maximize criminal justice in Dane County; you not only have the authority to make these changes, you might also be absolutely correct in doing so.

And I acknowledge my personal disappointment is generally irrelevant. While it's true that a few judges, retired judges, law professors, and more than a few defense attorneys personally criticized me for appearing to have abandoned neutrality in my leading efforts to coordinate and collaborate with your office as we experimented with a non-random, Intake-Week case assignment system, there is nothing personal in these matters. Then, as now, we are professionals performing our professional responsibilities to the best of our abilities given the resources available to us.

My disappointment is based entirely on the complete lack of communication and effort to cooperate *prior* to making these very significant changes that will now affect everyone who works in or appears as a party in our courts.

We as judges and I as the drafter were sincere when we concluded our public statement and explanation last Spring with the following thoughts:

Finally, just as we did when we considered and ultimately adopted the changes in our practices, we want to continue open, collaborative dialogue with the District Attorney and his staff, as well as with defense counsel and all those in court services. [. . .] Messy as it has been, we hope this process has helped us all become a little better at working together to create a fair and efficient criminal justice system. Above everything else, we strongly recommend that we continue our discussions, cooperation and collaboration. Whether you agree with our recommendations now or not, we hope you all join us in our continuing efforts to provide the best possible justice system for all of the people of Dane County.

The manner in which you made these changes last week, the process, shows me you have clearly and completely abandoned any effort toward open, collaborative dialogue.

This is regrettable not only in marking a return to closed, silo-like practices and policies with no regard for systemic consequences, but also because I predict you will very soon need the courts to change our calendaring practices for felony cases. Your Felony Team structure as explained to me cannot work without substantial court calendaring changes. But how will we be able to even consider reasonable, effective changes if we don't communicate with each other? Even if we are completely willing to make reasonable changes, you have to at least talk with us to let us know what might help, and what might make things more difficult, *before* we make any changes.

In the end, when you are ready to return to open, collaborative dialogue about making helpful changes in our criminal justice system, including the imminent changes that will be necessary if your newly adopted structure is to be successful, please know I will still be ready to listen and to consider your proposals. And if we happen to respectfully disagree, I hope we can still continue to share honest communication with each other, as I have tried to share with you in this letter.

Very Truly Yours,

Judge Nicholas J. McNamara
Dane County Circuit Court, Branch 5

cc: Dane County Judge, via email
Dane County Deputy DA Corey Stephan, via email



Judge Ellen K. Berz
DANE COUNTY CIRCUIT COURT, BRANCH 11
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Rebecca Krull, Clerk
Richie Stiles-Riddle, Secretary

Jennifer Poirior, Court Reporter

March 11, 2016

District Attorney Ismael Ozanne
Office of the District Attorney
215 S. Hamilton, 3rd Floor
Madison, WI 53703

Re: Branch 11 Criminal Cases

Dear Mr. Ozanne:

As you know, two of the three prosecutors who had been assigned to Branch 11 submitted their letters of resignation from your office. A.D.A. Mimier informed you in January of his intended April 1, 2016 retirement. A.D.A. Schlipper informed you last December of her impending resignation to accept a position in the U.S. Attorney's Office. As it turns out, Ms. Schlipper did not leave until March 4.

The caseloads assigned to Attorney Mimier and Attorney Schlipper comprise a majority of the criminal cases in Branch 11. Several of these cases, including homicide cases, are now scheduled for jury trial. I, along with the victims, victims' families, witnesses and defendants look for these cases to efficiently proceed to trial or other disposition. To date, however, we have not been informed of any reassignment of cases to different prosecutors. This delays efforts at case resolution and trial preparation.

I appreciate that your office, like every arm of the justice system (e.g., public defenders, courts, clerks, probation, AODA service providers) has limited resources. Nonetheless, it is imperative that everyone work to ensure equal and efficient justice.

I would appreciate receiving a list of prosecutor case reassignments as soon as possible so that cases can proceed without delay through our justice system. If you foresee any problems, please contact me immediately.

Thank you for your cooperation.

Sincerely,

Judge Ellen K. Berz

Cc: Juan Colas, Presiding Judge-Dane County
William Hanrahan, Presiding Judge-Criminal Division



Honorable Juan B. Colás
Presiding Judge, Dane County Circuit Court
215 South Hamilton Street, Room 7103
Madison, WI 53703-3291

Telephone: (608) 266-4460

Facsimile: (608) 266-4079

Ashley Sanders, Clerk

Renee Treasure, Judicial Assistant

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 20th 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 22nd that your office's request for a second delay in the effective date of the amendment be on the agenda for the June 30th judges meeting. The rule is now scheduled to be effective on July 1st.

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 14th 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 26th meeting and raised no concerns and the change was approved by the judges. It was not until June 2nd, 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 1st, "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.

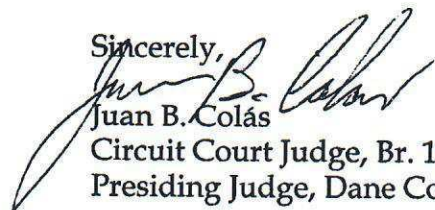
It is true, as your letter states, that delaying a bail hearing avoids creating a court record for suspects your office eventually decides not to charge. Are we willing to accept that the price the poor must pay to avoid a court record is extra time in jail for an offense they will not be charged with? 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", 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



**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