



1959

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### Recommended Citation

Crum, Charles Liebert (1959) "The Model Rules of Traffic Court Procedure," *North Dakota Law Review*. Vol. 35: No. 2, Article 2.

Available at: <https://commons.und.edu/ndlr/vol35/iss2/2>

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## THE MODEL RULES OF TRAFFIC COURT PROCEDURE

CHARLES LIEBERT CRUM\*

The simplest method of launching immediately into the heart of this discussion is merely to set forth the facts and holding of a recent North Dakota judicial decision involving a traffic charge. The case is *State v. Trygg*,<sup>1</sup> which was decided last year by the Burleigh County District Court.<sup>2</sup>

The defendant Trygg was given a traffic ticket by a North Dakota highway patrol officer on August 9, 1957. The ticket was the combined Traffic-Summons-Complaint form now being generally used by members of the highway patrol. It charged Trygg with "following another vehicle too closely; reckless driving." He was cited to appear in court on August 12, 1957, three days later. The court was designated by circling the letters "J.P." which appear printed on the ticket for the use of traffic officers, and below this there appeared in ink the words "police station, Bismarck," and "I. M. Oseth, 8-12-57, 1:00 P.M." The promise to appear in the document was not signed.

When the case was tried before the Police Magistrate, Trygg's attorney moved to quash the ticket and dismiss the case on several grounds. He argued that Trygg had not been given the requisite five day period in which to prepare his case required by the terms of the statute.<sup>3</sup> He argued further that the ticket did not adequately designate the court. He also contended that it did not adequately charge an offense, the contention being that "following too closely" is one offense<sup>4</sup> and "reckless driving" is another<sup>5</sup> and the particulars of neither offense had been set forth in the ticket.

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1. Unreported. A summary of the case appears in District Court Digests, 34 N. Dak. L. Rev. 84 (1958).

2. For additional material on the subject of this discussion see ABA Traffic Court Program, *Report on the Courts of Limited Jurisdiction in North Dakota*, 31 N. Dak. L. Rev. 5 (1955); Blinn, *Survey of the Trial Courts of the North Dakota Judicial System*, 26 N.D. Bar Briefs 345 (1950); Handbook of the National Conference of Commissioners on Uniform State Laws 240-56 (1957).

3. N.D. Rev. Code § 37-0908 (1943) provides that the time to be specified in a traffic summons shall be "at least five days after such arrest unless the person arrested shall demand an earlier hearing, and if the person arrested desires, he may have the right, at a convenient hour, to an immediate hearing or to a hearing within 24 hours."

4. N.D. Rev. Code § 39-0108 (1943), dealing with the offense of "following too closely" provides that "the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." The District Court's opinion stated that "The charge of driving too closely must necessarily vary under different conditions, and therefore the particulars should be set forth in the complaint, not merely the conclusions of the officer."

5. N.D. Rev. Code § 39-0803 (Supp. 1957) declares a person guilty of reckless driving

This argument was a losing one when the case was tried in the Police Magistrate's court and the defendant was given a fine and a short jail sentence. However, when Trygg appealed his conviction to the district court he won his case. The court ruled that Trygg had not voluntarily waived his right to a five-day period before appearance to answer the ticket by appearing on the date the ticket stipulated, since the language appearing on the ticket would indicate to an ordinary citizen that he would be subject to arrest for a separate offense if he failed to appear at the specified time.<sup>6</sup> The District Court further ruled that the court in which defendant was cited to appear had not been adequately designated, stating that it was "confusing" to draw a circle around the letters "J.P." while leaving the words "City" and "County" open. Evidently the Court's view was that as a general proposition a defendant unfamiliar with the local courts would not know whether he was being brought to a trial before a county or municipal justice of the peace.

The District Court's opinion went further. It was also held that the Traffic Ticket-Summons-Complaint form violated § 33-1204 of the North Dakota Revised Code of 1943, which sets forth a form of complaint for prosecutions in justice courts.<sup>7</sup> It was further ruled that the complaint in effect charged two offenses rather than one, and did not give the particular circumstances of either offense sufficiently to "apprise the defendant of what he (was) required to meet at the trial." The Court's suggestion, as I understand the opinion, was that the preparation of complaints ought to be left to the prosecuting attorneys.<sup>8</sup> On this basis the District Court dismissed the case.

## II.

I have set forth the facts and holding of *State v. Trygg* at some length for a number of reasons. It is the most detailed judicial opinion dealing with the procedural problems facing traffic courts

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if he drives a vehicle "(1) Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others; or (2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another." See *State v. Tjaden*, 69 N.W.2d 272, 280 (N.D. 1955).

6. The "Violator's Copy" of the Ticket-Summons-Complaint contains a notice that "Failure to obey this summons is violation of Section 39-0708 of the North Dakota Revised Code of 1943 as amended and is a separate offense from the one with which you are charged."

7. N.D. Rev. Code § 33-1204 (1943) states that a complaint in justice court "may" be drawn in the form set forth therein. See *Yunker v. Quillin*, 202 Ore. 362, 275 P.2d 240 (1954).

8. The opinion states: "The procedure outlined by law is not cumbersome or tedious, and it seems doubtful if those uneducated in the law can properly prepare criminal complaints; such things should be left with the duly constituted authorities."

in this state that I could find, and since my subject at this conference is a set of Model Rules for handling traffic court cases it was an obvious starting point. Moreover, the case illustrates exceptionally well the fundamental idea that I want to get across. I think we can sum the *Trygg* case up reasonably well by saying that it illustrates more graphically than any lengthy argument the fact that adoption of the Model Rules of Traffic Court Procedure would be highly desirable in North Dakota on at least two counts.

First, under the Model Rules the case could readily have been handled in such a way as to avoid any chance of reversal, whereas under the present statutes it would have been considerably more difficult to do so. Second, if the Model Rules had been in effect there could have been no question about the legal validity of the Traffic Ticket-Summons-Complaint form, whereas the opinion of the Court in the *Trygg* case seems to indicate that a thoroughly undesirable legal loophole may exist with regard to the form.<sup>9</sup> In short, the adoption of the Model Rules of Traffic Court Procedure in North Dakota would be a distinct step forward in the direction of achieving a simple, workable, fair and effective method of handling traffic cases.

Let's start out, then, with some fundamentals. Just what are the Model Rules of Procedure for Traffic Courts? The answer is that they are a set of rules drafted jointly by representatives of the American Bar Association's Traffic Court Program and the National Conference of Commissioners on Uniform State Laws, two of the most highly respected legal organizations in the country. Those of you in attendance at this Conference have already had a chance to become acquainted with Mr. James P. Economos, the American Bar Association's representative here, who had a hand in drafting the proposed rules. The Conference of Commissioners on Uniform State Laws has written most of the statutes already in force in this state dealing with the operation of motor vehicles. The North Dakota Motor Vehicle Registration Act, the Anti-Theft Act, the statutes dealing with operators and chauffeur's licenses, and the fundamental provisions of our statutes regulating traffic on the highways have all been adopted by the North Dakota Legislative Assembly from model statutes which have come from this source. The Model Rules are the latest proposal made by the Commissioners on Uniform State Laws, having been approved after careful study and investigation on July 10, 1957. If past experience

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9. The form is still in use. This view expressed to the writer by the counsel who drew it is that notwithstanding the *Trygg* decision, it is sufficient in most cases.

is any guide, they will quickly be enacted by a very large number of state legislatures throughout the entire country.

The Rules themselves have been written in the simplest possible language, in an effort to attain the greatest possible degree of clarity and understanding. They incorporate as far as possible those features of traffic court procedure which an intensive study on a national basis has indicated are most desirable. The first section of the Rules states that they are intended to "provide for the just determination of (traffic) cases and to that effect shall be construed to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

The Model Rules were drafted in recognition of the fact that in traffic cases distinct problems of law enforcement of a type not encountered in the usual run of misdemeanor proceedings are often present. Underlying these rules is recognition of the fact that one definite objective of traffic court proceedings is not merely punishment of offenders but education toward the maintenance of public safety on the highways. Accordingly the Model Rules provide that as far as it practicable to do so, traffic cases are to be tried separate and apart from other cases in sessions of court specially set aside for that purpose. This is a provision having a distinct tendency to improve the dignity, impressiveness, general atmosphere and effectiveness of the proceedings. It allows the person called into court on a traffic charge to observe the court in operation dealing with a wide variety of traffic offenses, and thereby gives him an opportunity to see for himself how serious and dangerous many of the violations are. Equally, it allows the presiding judge, when he finds it desirable, to talk to traffic violators as a group about the importance of observing rules of common sense and courtesy on the highways. In many traffic courts about the country, such talks have become an extremely effective and valuable portion of the proceedings.

Quite incidentally, the segregation of traffic cases from other types of offenses will often result in making the entire court session a good deal more pleasant from the standpoint of the affected citizen as well, since the experience of sitting next to a collection of drunk and disorderly cases while waiting to plead to a traffic ticket is rarely an edifying one. And the idea of making traffic court sessions as reasonably pleasant and comfortable for the participants as possible has about it some connotations of good

public service. After all, the defendants are normally going to go back out of court to a life as members of the community, and the impression they carry with them of the court system is a matter of considerable concern. More than that, not all of them are guilty; the presumption is that they're innocent until proved otherwise. With those defendants it is highly important that they leave the courtroom feeling they have been fairly, courteously, and justly dealt with.

### III.

From the standpoint of the traffic officer and the administrative personnel engaged in traffic law enforcement, the crux of the Model Rules comes in Section 3. This section provides for the use of a Uniform Traffic Ticket and Complaint Form. Those of you who are familiar with the ticket forms now being used by the Highway Patrol will be aware of the fact that the North Dakota form now being used bears a very considerable resemblance to this document. The reason for this is that the attorney for the State Highway Department and the Attorney General's office drafted the ticket along lines recommended by the ABA's Traffic Court Program. The form of tickets being used in various cities about the state vary widely from this model and even the Highway Patrol does not always use this form, since I'm told the Cass County courts prefer their own type of document. However, in the event the Model Rules were adopted, this document would become standard for the state, modified somewhat to conform to local conditions.

One objective underlying the use of the Uniform Ticket is to reduce paper work to a minimum. The officer using it has to fill out only one document and make only one entry in his log. The ticket comes in four pages, the first page consisting of the complaint which is submitted to the court. The Uniform Ticket has been drafted in such a fashion that six of the most commonly encountered violations can be charged merely by checking off printed squares upon the ticket. As presently drafted, however, the North Dakota form now being used by the Highway Patrol requires the officer to set forth the offense by writing it out on each occasion. The North Dakota form also contains a blank in which details of the violation can be inserted. Notwithstanding the language used by the court in the *Trygg* case, it would seem that under the provisions of our statutes<sup>10</sup> relating to the charging of criminal

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10. N.D. Rev. Code § 29-1110 (1943): "Charging The Offense. The indictment or information may charge, and is valid and sufficient if it charges, the offense for which the defendant is being prosecuted in one or more of the following ways: (1) By using the

offenses either method ought to be legally sufficient. The North Dakota Supreme Court has in the past held that a complaint or information charging an offense substantially in statutory language is perfectly valid where it also includes enough details to allow the defendant to know what particular action he has taken is deemed to constitute the offense.<sup>11</sup> Read as a whole, the Uniform Ticket would certainly seem to meet every reasonable legal test in this regard.

Page two of the ticket is substantially a duplicate of the first but is intended for the purpose of record-keeping and statistics on the part of the Driver's License Department. Page three is the Police Record of the case, for the files of the particular department issuing the ticket. Page four is the Summons. On the North Dakota form this is termed the "Violator's Copy," and the actual "Summons," from a technical standpoint, is reprinted on every page. On the reverse side of these various pages of the ticket which are incidentally color-coded in the actual printed form for easier handling, there appears space for a complete record of the disposition of the case from beginning to end.

While the Highway Department and Attorney General's office in this state made a number of changes in this form to conform to local conditions, the Highway Patrol form now in use nevertheless follows the Uniform Ticket model very closely.

Under the Model Rules of Traffic Court Procedure, each police magistrate or justice of the peace would be directly responsible for the issuance of all Uniform Traffic Tickets to law enforcement officers within his jurisdiction. Any person guilty of an unauthorized disposition of these tickets would be in contempt of court.<sup>12</sup>

Under the law of this state<sup>13</sup> most traffic offenders, when halted by police officers, are entitled to release upon signing a written promise to appear at the time and place set forth in the ticket. However, it is mandatory to arrest an offender in three cases: (a) when the officer has good reason to believe the violator to be guilty of a felony; (b) when the violator has caused or

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name given to the offense by a statute and sufficient particulars to give the court and the defendant notice of the offense intended to be charged; (2) By stating so much of the definition of the offense in terms of the statute defining the offense, or in terms of sufficiently the same meaning, as is sufficient to give the court and the defendant notice of the offense intended to be charged."

11. See *State v. Tjaden*, 69 N.W.2d 272 (N.D. 1955), wherein an information charging the crime of reckless driving in substantially the language of the statute (*ante*, note 5) was upheld as sufficient.

12. At the Conference wherein this paper was delivered, Mr. Economos referred to the Uniform Ticket in graphic language as a "no-fix ticket," to illustrate this point.

13. N.D. Rev. Code §§ 39-0708, 39-0709 (1943).

contributed to an accident resulting in injury or death; or (c) when the violator is under the influence of liquor or drugs. The officer has discretionary authority to either arrest or release upon written promise to appear violators who are charged with two other types of offenses, reckless driving and exceeding the speed limits.

Where a traffic offender is released upon his written promise to appear, § 39-0708 of the Code provides that a period of at least five days after the arrest must be given before the hearing, unless the defendant desires an appearance in court at an earlier date. The provision for an early hearing is, of course, inserted primarily for the convenience of non-resident motorists passing through the state.

What happens under the Model Rules when a defendant fails to appear at the specified time? In such cases the Model Rules provide simply that the Court shall issue a warrant for the arrest of a defendant who is a resident of the state. If the warrant is not executed and the defendant arrested within 30 days after it is issued, the court is then required to report the name of the defendant, the date and nature of the offense, the license number of the vehicle to the Department of Motor Vehicles. The case is then marked closed upon the court records, thus getting it off the books of the court. However, it is subject to reopening once the defendant is brought back into court. Under North Dakota law, failure to appear is also a separate offense.

Where a non-resident defendant fails to appear within 30 days after issuance of the ticket, the court under the Model Rules is required to mail a notice to the defendant at his address as set forth on the ticket. A copy of this notice will be sent to the Department of Motor Vehicles for such action in the matter as the State sees fit to take. If no appearance by the defendant is forthcoming within 30 days after this notice to appear has been mailed, the court once again marks the case as closed upon its records—thus clearing it off the docket—subject to reopening if the defendant thereafter comes within the jurisdiction of the court.

What happens if the defendant is a minor? The answer is that such a case should be transferred at once to the juvenile court under the existing laws of this state. The juvenile court may, if it sees fit, permit the minor to be prosecuted thereafter in the traffic court. It may also decline to do so, depending on the view which the juvenile commissioner takes of the case. The ABA Traffic Court Program has recommended a change in the law in this regard to



permit prosecution in the traffic courts of juvenile offenders over 16 years of age in all traffic cases, but so far no action has been taken upon this recommendation and whether it will be adopted seems doubtful.

## V.

The actual trial of a traffic case under the Model Rules would continue to be governed by the applicable and established laws of evidence and procedure in most cases. However, one or two changes would be made of beneficial character. The Model Rules provide among other things that, "Before accepting a plea of guilty to a traffic offense other than parking, standing, or non-moving, the court shall inform the defendant of his rights, which shall include but not be limited to the right (1) to engage counsel, (2) to a reasonable continuance to engage counsel, (3) to have process issued by the court<sup>14</sup> . . . to compel the attendance of witnesses in his behalf, (4) to a trial by jury, if such is available, and (5) to appeal."

The procedure outlined in this provision is already being followed in most well-operated traffic courts. Consequently the greatest impact of this particular provision would come with regard to traffic courts where these safeguards of a defendant's rights are not presently being observed. In such courts the provision would constitute a distinct added guarantee to a defendant that proper procedures will be followed and his rights are arbitrarily overridden.

A second change would operate to eliminate problems of the type encountered in the *Trygg* case if it became apparent that such problems were arising. The Model Rules provide that, "The court may amend or permit to be amended any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial. If the defendant is substantially prejudiced in the presentation of the case as a result of the amendment, the court shall adjourn the hearing to some future time, upon such terms as he shall think proper."<sup>15</sup>

This provision broadens very considerably the present rules as to amendments in criminal cases. Thus in situations where an officer has mistakenly failed to grant the statutory period of five days before the hearing in court, the proper procedure would simply be to amend the complaint, postponing the hearing until the defendant had been given the benefit of the statutory period of

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14. Model Rule 1:3-6 (3) stipulates this right shall be "without expense" to the defendant.

15. Model Rule 1:4-3.

preparation.<sup>16</sup> Similarly, where the complaint failed to charge an offense properly it would be amendable on reasonable terms. At present the power of amendment appears to be limited primarily to matters of form in criminal prosecutions.<sup>17</sup>

The exercise of this power of amendment, in cases where serious legal objections developed during the course of the proceedings, would make it possible to eliminate most of the potential grounds for reversal before the case reached its conclusion. The broadened power of amendment therefore furnishes an excellent method of reaching results based on the merits of the cases rather than on technical points.

## VI.

A large number of the cases coming through the traffic courts are essentially routine matters, as all of us are aware. For handling such cases the Model Rules also permit simple and useful procedures.

The major innovation made by the Model Rules is that of permitting a court to establish what is called a Violations Bureau whenever it determines that the efficient handling of the court's business makes this desirable. The violations bureau is operated by a violations clerk—a member of the local police force or some other appropriate official—who is responsible to the court appointing him. The basic function of this clerk is to accept pleas of guilty and payment of fines in traffic cases prescribed by the court. The precise language of the Model Rules in this respect is as follows:

"The court shall by order, which may from time to time be amended, supplemented, or repealed, designate the traffic offenses within the authority of the violations clerk. Such offenses shall not include: (1) indictable offenses; (2) offenses resulting in an accident; (3) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control; (4) reckless driving; (5) leaving the scene of an accident; (6) driving while under suspension or revocation of driver's license; (7) driving without being licensed to drive; (8) exceeding the speed limit by more than (15) miles per hour; or (9) a second moving offense within a twelve-months period.

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16. Under N.D. Rev. Code § 33-1211 (1943), a reasonable postponement of the hearing or trial of a criminal action in a justice court may be ordered for any good cause, so the provision of the Model Rules in this respect appears to be cumulative rather than new.

17. N.D. Rev. Code § 29-1145 (1943). However, it should be noted that in addition a bill of particulars may be obtained to supplement an information or complaint when desirable.

"The court shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid to, receipted by, and accounted for by the violations clerk in accordance with these rules."

This sort of procedure is useful primarily in the larger cities and towns where the flow of business through the traffic courts is extensive in character. In those areas it operates to save a good deal of the court's time, allowing concentration on the more serious offenses.

Where a violations bureau of this sort has been established, any person charged with an offense listed in the schedule may appear before the violations clerk and pay the fine. When a person is charged with a non-moving offense, he is entitled to mail in the amount of the fine—a distinct convenience. Methods of this sort are already in use in a few traffic courts in this state and have proved to be in most instances a distinctly popular improvement.

## VII.

I think we can sum up this discussion of the Model Rules with the statement that they represent primarily a codification of what constitutes good practice in handling traffic cases. The qualities needed for operation of a good traffic court have been summed up in one study as follows: (1) good personnel, (2) impartiality, (3) availability, (4) speedy procedure, (5) dignity, (6) predictability, and (7) accountability. While a few minor modifications to take local conditions into account might be desirable, the adoption of the Model Rules of Traffic Court Procedure would nevertheless be a substantial step toward the achievement of many of these desirable factors. The control of traffic is one of the most serious problems facing our modern society, and effective law enforcement in this area requires courts operating under the best available system of procedure.