

## Order dated December 18, 2018, re: Rules 21, 22 and 33

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# SUPREME COURT OF MISSOURI

## en banc

December 18, 2018

Effective July 1, 2019

In re:

(1) Repeal of subdivision 21.03, entitled "Misdemeanors – Summons or Warrant of Arrest – When Issued;" subdivision 21.04, entitled "Misdemeanors – Statement of Probable Cause – Contents;" subdivision 21.05, entitled "Misdemeanor – Summons – Contents;" the heading title and subdivision 21.06, entitled "Misdemeanors – Warrant of Arrest – Contents;" the heading title and subdivision 21.09, entitled "Misdemeanors – Appearance Under Warrant Before Judge;" and the heading title and subdivision 21.10, entitled "Misdemeanors – Initial Proceedings Before Judge," of Rule 21, entitled "Procedure Applicable to Misdemeanors Only," and in lieu thereof adoption of a new subdivision 21.03, entitled "Misdemeanors – Summons or Warrant of Arrest – When Issued;" a new subdivision 21.04, entitled "Misdemeanors – Statement of Probable Cause – Contents;" a new subdivision 21.05, entitled "Misdemeanor – Summons – Contents;" a new heading title and a new subdivision 21.06, entitled "Misdemeanors – Warrant for Arrest – Contents;" a new heading title and a new subdivision 21.09, entitled "Misdemeanors – Appearance Under Warrant Before the Court;" and a new heading title and a new subdivision 21.10, entitled "Misdemeanors – Initial Appearance Before the Court."

(2) Repeal of subdivision 22.03, entitled "Felonies – Statement of Probable Cause – Contents;" subdivision 22.04, entitled "Felonies – Warrant of Arrest – When Issued;" the heading title and subdivision 22.05, entitled "Felonies – Warrant of Arrest – Contents;" the heading title and subdivision 22.07, entitled "Felonies – Appearance Under Warrant Before Judge;" the heading title and subdivision 22.08, entitled "Felonies – Initial Proceedings Before Judge;" and subdivision 22.09, entitled "Felonies – Preliminary Hearing," of Rule 22, entitled "Procedure Applicable to Felonies Only," and in lieu thereof adoption of a new subdivision 22.03, entitled "Felonies – Statement of Probable Cause – Contents;" a new subdivision 22.04, entitled "Felonies – Warrant of Arrest – When Issued;" a new heading title and a new subdivision 22.05, entitled "Felonies – Warrant for Arrest – Contents;" a new heading title and a new subdivision 22.07, entitled "Felonies – Appearance Under Warrant Before the Court;" a new heading title and a new subdivision 22.08, entitled "Felonies – Initial Appearance Before the Court," and a new subdivision 22.09, entitled "Felonies – Preliminary Hearing."

(3) Repeal of subdivision 33.01, entitled "Misdemeanors or Felonies – Right to Release – Conditions;"

the heading title and subdivision 33.02, entitled "Misdemeanors or Felonies – Warrant for Arrest – Officials Authorized to Set Conditions of Release – Conditions to be Stated on Warrant;" subdivision 33.04, entitled "Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release;" the heading title and subdivision 33.05, entitled "Misdemeanors or Felonies – Right to Review of Conditions;" subdivision 33.06, entitled "Misdemeanors or Felonies – Modification of Conditions of Release;" subdivision 33.07, entitled "Misdemeanors or Felonies – Rules of Evidence Inapplicable;" the heading title and subdivision 33.08, entitled "Misdemeanors or Felonies – Rearrest of Accused;" subdivision 33.09, entitled "Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher Court;" subdivision 33.10, entitled "Misdemeanors or Felonies – Transmittal of Record by Clerk of the Releasing Court;" and subdivision 33.11, entitled "Misdemeanors or Felonies – Bonds – Where Filed – Certification by Sherriff or Peace Officer – Cash Bonds," of Rule 33, entitled "Misdemeanors or Felonies – Release Pending Further Proceedings," and in lieu thereof adoption of a new subdivision 33.01, entitled "Misdemeanors or Felonies – Right to Release – Conditions;" a new heading title and a new subdivision 33.02, entitled "Misdemeanors or Felonies – Warrant for Arrest – Conditions to be Stated on Warrant;" a new subdivision 33.04, entitled "Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release;" a new heading title and a new subdivision 33.05, entitled "Misdemeanors or Felonies – Release Hearing;" a new subdivision 33.06, entitled "Misdemeanors or Felonies – Modification of Conditions of Release;" a new subdivision 33.07, entitled "Misdemeanors or Felonies – Rules of Evidence Inapplicable;" a new heading title and a new subdivision 33.08, entitled "Misdemeanors or Felonies – Rearrest of Defendant;" a new subdivision 33.09, entitled "Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher Court;" a new subdivision 33.10, entitled "Misdemeanors or Felonies – Transmittal of Record by Clerk of the Releasing Court," and a new subdivision 33.11, entitled "Misdemeanors or Felonies – Bonds – Where Filed – Certification by Sherriff or Peace Officer – Cash Bonds."

## **ORDER**

1. It is ordered that effective July 1, 2019, subdivision 21.03, subdivision 21.04, subdivision 21.05, the heading title and subdivision 21.06, the heading title and subdivision 21.09, and the heading title and subdivision 21.10 of Rule 21 be and the same are hereby repealed and a new subdivision 21.03, a new subdivision 21.04, a new subdivision 21.05, a new heading title and a new subdivision 21.06, a new heading title and a new subdivision 21.09, and a new heading title and a new subdivision 21.10 adopted in lieu thereof to read as follows:

### **21.03 MISDEMEANORS – SUMMONS OR WARRANT OF ARREST – WHEN ISSUED**

(a) When an information is filed pursuant to Rule 21.02, a summons shall be issued unless the court finds that sufficient facts have been stated to show probable cause that a misdemeanor has been committed and there are reasonable grounds to believe:

(1) The defendant will not appear upon the summons; or

(2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the defendant may be issued.

(b) When an indictment charging the commission of a misdemeanor is returned, either a summons or warrant of arrest may be issued.

(c) If a warrant is issued under this rule, the court shall take into account, on the basis of available information, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

#### 21.04 MISDEMEANORS – STATEMENT OF PROBABLE CAUSE – CONTENTS

A statement of probable cause must be in writing and shall:

(a) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(b) State the date and place of the offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe an offense was committed and that the defendant committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(f) Be signed and on a form bearing notice that false statements made therein are punishable by law.

#### 21.05 MISDEMEANOR – SUMMONS – CONTENTS

The summons shall:

(a) Be in writing and in the name of the State of Missouri;

(b) State the name of the defendant summoned;

(c) Describe the misdemeanor charged;

(d) Be signed by the court, or clerk at the court's direction for a specific summons; and

(e) Command the defendant to appear before the court at a stated time and place in response thereto.

#### 21.06 MISDEMEANORS – WARRANT FOR ARREST – CONTENTS

(a) The warrant for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

- (1) Contain the name of the defendant to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;
- (2) Describe the offense charged in the information or indictment;
- (3) State the date when issued and the county where issued;
- (4) Command that the defendant named or described therein be arrested and brought before the court designated in the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays;
- (5) Specify the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c); and
- (6) Be signed by the court, or clerk at the court's direction for a specific warrant.

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#### 21.09 MISDEMEANORS – APPEARANCE UNDER WARRANT BEFORE THE COURT

A defendant arrested under a warrant for any misdemeanor shall be brought for an appearance before a judge of the court from which the warrant was issued as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

The warrant, with proper return thereon, shall be filed with the court as soon as practicable.

#### 21.10 MISDEMEANORS – INITIAL APPEARANCE BEFORE THE COURT

Upon the defendant's initial appearance:

(a) The court shall inform the defendant of the misdemeanor charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall

inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

2. It is ordered that effective July 1, 2019, subdivision 22.03, subdivision 22.04, the heading title and subdivision 22.05, the heading title and subdivision 22.07, the heading title and subdivision 22.08, and subdivision 22.09 of Rule 22 be and the same are hereby repealed and a new subdivision 22.03, a new subdivision 22.04, a new heading title and a new subdivision 22.05, a new heading title and a new subdivision 22.07, a new heading title and a new subdivision 22.08, and a new subdivision 22.09 adopted in lieu thereof to read as follows:

#### 22.03 FELONIES – STATEMENT OF PROBABLE CAUSE – CONTENTS

A statement of probable cause must be in writing and shall:

(a) State the name of the defendant or, if not known, designate the defendant by any name or description by which the defendant can be identified with reasonable certainty;

(b) State the date and place of the offense as definitely as can be done;

(c) State the facts that support a finding of probable cause to believe an offense was committed and that the defendant committed it;

(d) If a warrant will be requested, state the facts, if any, that support a finding of reasonable grounds to believe the defendant will not appear upon a summons or the defendant poses a danger to a crime victim, the community, or any other person;

(e) State that the facts contained therein are true; and

(f) Be signed and on a form bearing notice that false statements made therein are

punishable by law.

#### 22.04 FELONIES – WARRANT OF ARREST – WHEN ISSUED

(a) When a complaint is filed pursuant to Rule 22.02 and sufficient facts have been stated to show probable cause that a felony has been committed, a summons shall be issued unless the court finds there are reasonable grounds to believe:

- (1) The defendant will not appear upon the summons; or
- (2) The defendant poses a danger to a crime victim, the community, or any other person.

If the court so finds, a warrant of arrest for the defendant may be issued.

(b) When an indictment charging the commission of a felony is returned, either a summons or warrant of arrest may be issued.

(c) When a complaint or an indictment charges a corporation with the commission of a felony, a summons shall be issued.

(d) If a warrant is issued under this rule, the court shall take into account, on the basis of available information, the factors set forth in Rule 33.01(e) when setting the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c).

#### 22.05 FELONIES – WARRANT FOR ARREST – CONTENTS

(a) The warrant for arrest must be in writing and issued in the name of the State of Missouri. It may be directed to any peace officer in the state.

(b) The warrant shall:

- (1) Contain the name of the defendant to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;
- (2) Describe the felony charged in the complaint or indictment;
- (3) State the date when issued and the county where issued;
- (4) Command that the defendant named or described therein be arrested and brought before the court designated in the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays;
- (5) Specify the condition or combination of conditions of release, if any, required by Rule 33.01(b) and allowed by Rule 33.01(c); and

(6) Be signed by the court, or clerk at the court's direction for a specific warrant.

#### 22.07 FELONIES – APPEARANCE UNDER WARRANT BEFORE THE COURT

A defendant arrested under a warrant for any felony shall be brought for an appearance before a judge of the court from which the warrant was issued as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

The warrant, with proper return thereon, shall be filed with the court as soon as practicable.

#### 22.08 FELONIES – INITIAL APPEARANCE BEFORE THE COURT

Upon the defendant's initial appearance:

(a) The court shall inform the defendant of the felony charged, the right to retain counsel, the right to request the appointment of counsel if the defendant is unable to retain counsel, and the right to remain silent. The court shall also inform the defendant that any statement made by the defendant may be used against the defendant.

(b) If the defendant is appearing after release from custody on a warrant, the court shall inform the defendant of the conditions of release and that a warrant may be issued immediately upon any violation of a condition of release. The court shall also advise the defendant of the right to apply for a modification of any conditions of release at a hearing pursuant to Rule 33.06.

(c) If the defendant is in custody after arrest on a warrant, the court shall inform the defendant of the conditions of release, if any, and determine whether the defendant can meet the conditions. If a defendant is unable to meet the conditions, then, subject to the right of a victim to be informed of and heard at a bail hearing, the court may modify the conditions of release, if the court determines the circumstances of the defendant and the case require modification of the conditions. The court shall inform the defendant that a warrant for arrest may be issued immediately upon any violation of a condition of release. If the defendant is not released from custody following the initial appearance, the court shall advise the defendant of the right to a release hearing pursuant to Rule 33.05.

(d) If the defendant has appeared on a summons and the offense is required to be given an offense cycle number, the court shall ensure the defendant has been fingerprinted and processed by the appropriate law enforcement agency for the purposes of creating an offense cycle number.

#### 22.09 FELONIES – PRELIMINARY HEARING

(a) Preliminary Hearing. After the filing of a felony complaint, a preliminary hearing shall be held within a reasonable time. At the preliminary hearing the defendant shall not be called

upon to plead.

If the defendant waives preliminary hearing, the court shall order the defendant to appear to answer to the charge.

(b) Conduct of Hearing and Finding by the Court. If the defendant does not waive preliminary hearing, the hearing shall be held. The defendant may cross-examine witnesses and may introduce evidence.

If the court finds probable cause to believe a felony has been committed and the defendant has committed it, the court shall order the defendant to appear and answer to the charge; otherwise, the court shall discharge the defendant.

(c) Defendant to Appear in Court to Answer the Charge. If the defendant is held to answer to the charge, the court shall order the defendant to appear in the appropriate division on a day certain as soon as practicable, but not more than 40 days after completion of the preliminary hearing.

Within five days after concluding the proceedings, the court shall cause all papers in the proceeding and any bail posted by the defendant to be transmitted to that division.

3. It is ordered that effective July 1, 2019, subdivision 33.01, the heading title and subdivision 33.02, subdivision 33.04, the heading title and subdivision 33.05, subdivision 33.06, subdivision 33.07, the heading title and subdivision 33.08, the heading title and subdivision 33.09, subdivision 33.10, and subdivision 33.11 of Rule 33 be and the same are hereby repealed and a new subdivision 33.01, a new heading title and a new subdivision 33.02, a new subdivision 33.04, a new heading title and a new subdivision 33.05, a new subdivision 33.06, a new subdivision 33.07, a new heading title and a new subdivision 33.08, a new heading title and a new subdivision 33.09, a new subdivision 33.10, and a new subdivision 33.11 adopted in lieu thereof to read as follows:

### 33.01 MISDEMEANORS OR FELONIES – RIGHT TO RELEASE – CONDITIONS

(a) A defendant charged with a bailable offense shall be entitled to be released from custody pending trial or other stage of the criminal proceedings.

(b) The defendant's release shall be upon the conditions that:

(1) The defendant will appear in the court in which the case is prosecuted or appealed, from time to time as required to answer the criminal charge;

(2) The defendant will submit to the orders, judgment and sentence, and process of the court having jurisdiction over the defendant;

(3) The defendant shall not commit any new offenses and shall not tamper with any victim or witness in the case, nor have any person do so on the defendant's behalf; and



(4) The defendant will comply fully with any and all conditions imposed by the court in granting release.

(c) The court shall release the defendant on the defendant's own recognizance subject only to the conditions under subsection (b) with no additional conditions of release unless the court determines such release will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses. If the court so determines, it shall set and impose additional conditions of release pursuant to this subsection.

The court shall set and impose the least restrictive condition or combination of conditions of release, and the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

When considering the least restrictive condition or combination of conditions of release to set and impose, the court shall first consider non-monetary conditions. Should the court determine non-monetary conditions alone will not secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court may consider monetary conditions or a combination of non-monetary and monetary conditions to satisfy the foregoing. After considering the defendant's ability to pay, a monetary condition fixed at more than is necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses, is impermissible.

If the court determines additional conditions of release are required pursuant to this subsection, it shall set and impose one or more of the following conditions of release:

- (1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;
- (2) Place restrictions on the travel, association, or place of abode of the defendant during the period of release, including the holding by the court of the defendant's passport;
- (3) Require the defendant to report regularly to some officer of the court or peace officer, in such manner as the court directs;
- (4) Require the use of electronic monitoring of defendant's location, the testing of defendant for drug or alcohol use, or the installation and use of ignition interlock devices. The court may order the eligible defendant to pay all or a portion of the costs of such conditions, but the court shall consider how best to minimize the costs to the

defendant and waive the costs for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(5) Require the defendant to seek employment, to maintain employment, or to maintain or commence an educational program;

(6) Require the defendant to comply with a specified curfew;

(7) Require the defendant to refrain from possessing a firearm or other deadly weapon;

(8) Require the defendant to abstain from possession or use of alcohol or any controlled substance without a physician's prescription;

(9) Require the defendant to undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(10) Require the defendant to return to custody for specified hours following release for employment, school, treatment, or other limited purpose;

(11) Require the defendant to be placed on home supervision with or without the use of an electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court shall consider how best to minimize the costs of such condition to the defendant and waive the costs and ineligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs;

(12) Require the defendant to execute a monetary bond in a stated amount wherein the defendant promises to pay to the court the stated amount should the defendant fail to appear or abide by the conditions of release;

(13) Require the execution of a monetary bond in a stated amount with sufficient sureties, or the deposit in the registry of the court of a sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(14) Require the execution of a monetary bond in a stated amount and the deposit in the registry of the court of 10 percent, or such lesser sum as the court directs, of such sum in cash or negotiable bonds of the United States or the State of Missouri or any political subdivision;

(15) Require the deposit of a property bond of sufficient value as approved and directed by the court;

(16) Impose other conditions necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses.

(d) Should the court determine upon clear and convincing evidence that no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other person, including but not limited to the crime victims and witnesses, then the court shall order the defendant detained pending trial or any other stage of the criminal proceedings. A defendant so detained shall, upon written request filed after arraignment, be entitled to a trial which begins within 120 days of the defendant's request or within 120 days of an order granting a change of venue, whichever occurs later. Any request by the defendant to continue the trial beyond the 120 days shall be considered a waiver by the defendant of the right to have the trial conducted within 120 days.

(e) In determining whether to detain the defendant pursuant to subsection (d) or release the defendant with a condition or combination of conditions of release, if any, pursuant to subsection (c), the court shall base its determination on the individual circumstances of the defendant and the case. Based on available information, the court shall take into account: the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, including ability to pay, character, and mental condition; the length of the defendant's residence in the community; the defendant's record of convictions; the defendant's record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; whether the defendant was on probation, parole or release pending trial or appeal at the time the offense for which the court is considering detention or release was committed; and a validated evidentiary-based risk assessment tool approved by the Supreme Court of Missouri.

(f) A court detaining or releasing the defendant under this rule shall enter an order stating the condition or combination of conditions of release, if any, set and imposed by the court. If the defendant is detained and unable to comply with any condition of release, the defendant shall have the right to a release hearing pursuant to Rule 33.05. At any hearing conducted under Rule 33, the court shall permit but not require either party to make a record on the defendant's financial status and ability to pay any monetary condition. At such hearing, the court shall also make written or oral findings on the record supporting the reasons for detention or conditions set and imposed. The court shall inform the defendant of the conditions set and imposed, if any, and that the conditions of release may be revoked and the defendant detained until trial or other stage of the criminal proceedings for violation of any of the conditions of release and that a warrant for the defendant's arrest may be issued immediately upon notification to the court of any such violation.

### 33.02 MISDEMEANORS OR FELONIES – WARRANT FOR ARREST – CONDITIONS TO BE STATED ON WARRANT

The court, or clerk at the court's direction for a specific warrant, issuing a warrant for the arrest of any defendant shall state the condition or combination of conditions of release, if any, on the warrant for arrest.

### 33.04 MISDEMEANORS OR FELONIES – OFFICER AUTHORIZED TO ACCEPT CONDITIONS OF RELEASE

The court that set conditions of release, the clerk thereof, or the sheriff may accept the conditions of release and release the defendant.

### 33.05 MISDEMEANORS OR FELONIES – RELEASE HEARING

A defendant who continues to be detained after the initial appearance under Rule 21.10 or Rule 22.08 shall have defendant's detention or conditions of release reviewed at a hearing by the court subject to the right of a victim to be informed of and heard at the hearing. The hearing shall occur as soon as practicable but no later than seven working days after the initial appearance, absent good cause shown by the parties or the court. At the hearing, the court shall determine the defendant's right to release and any conditions of release as provided in Rule 33.01. Nothing herein shall prohibit a defendant from making subsequent application for review of the defendant's detention or conditions of release under Rule 33.01.

### 33.06 MISDEMEANORS OR FELONIES – MODIFICATION OF CONDITIONS OF RELEASE

(a) Upon motion by the state or by the defendant, or upon the court's own motion, the court, subject to the right of a victim to be informed of and be heard, and after notice to the parties and hearing, may modify the conditions of release when the court finds that:

- (1) New, different or additional requirements for release are necessary; or
- (2) The conditions of release which have been set are excessive; or
- (3) The defendant has failed to comply with or has violated the conditions of release; or
- (4) The defendant has been convicted of the offense charged.

(b) When the conditions of release are increased by the court, or new conditions of release are set and imposed, the defendant shall be remanded to the custody of the sheriff or other officer until compliance with the modified conditions. If the defendant is not in custody, the court may order that a warrant for the defendant's arrest be issued.

### 33.07 MISDEMEANORS OR FELONIES – RULES OF EVIDENCE INAPPLICABLE

Proceedings under Rule 33 shall be informal and rules of evidence need not apply.

### 33.08 MISDEMEANORS OR FELONIES – REARREST OF DEFENDANT

The court may order the arrest of a defendant who has been released if it shall appear to the court that:

(a) There has been a breach of any condition of release; or

(b) The conditions of release should be modified or new or additional conditions imposed.

The defendant shall be entitled to a hearing concerning the reasons for the issuance of the warrant as soon as practicable, but when the defendant is confined in the county where issued, no later than 48 hours after confinement, excluding weekends and holidays.

### 33.09 MISDEMEANORS OR FELONIES - FAILURE OF COURT TO SET CONDITIONS OF RELEASE, OR SETTING OF INADEQUATE OR EXCESSIVE CONDITIONS OF RELEASE - APPLICATION TO HIGHER COURT

Pursuant to these rules, applicable statutes and constitutional provisions, if the defendant or the state allege the court unlawfully detained the defendant, failed to detain the defendant, or set inadequate or excessive conditions of release, the defendant or the state may seek remedial writ relief in a higher court pursuant to Rule 84.24.

### 33.10 MISDEMEANORS OR FELONIES – TRANSMITTAL OF RECORD BY CLERK OF THE RELEASING COURT

When any defendant is released by a court other than the court in which the defendant is to appear, the clerk of the releasing court shall transmit a record of the release, together with any conditions of release imposed, to the clerk of the court in which the defendant released is required to appear.

### 33.11 MISDEMEANORS OR FELONIES – BONDS – WHERE FILED – CERTIFICATION BY SHERIFF OR PEACE OFFICER – CASH BONDS

All bonds shall be filed by the clerk of the court in which the defendant is required to appear. All bonds taken by the sheriff or by any other peace officer shall be certified by such officer and transmitted to the clerk of the court in which the defendant is required to appear. When cash or securities specified in Rule 33.01 are taken they shall be delivered to the clerk of the court in which the defendant is required to appear and deposited in the registry of the court.

4. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

5. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

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ZEL M. FISCHER  
Chief Justice

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