

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BECKER

SEVENTH JUDICIAL DISTRICT

State of Minnesota,	)
Plaintiff,	)
	)
vs.	)
	)
Nicole Lynn Mitchell,	)
Defendant.	)
	)

**ORDER**  
**& MEMORANDUM**  
 FILE #: 03-CR-24-654

The above-entitled matter came on for hearing before the undersigned on January 14, 2025, at the Becker County Courthouse in Detroit Lakes, Minnesota, on the Defendant’s motion to continue the trial in this matter. The State was represented by Becker County Attorney Brian McDonald. The Defendant appeared via Zoom and was represented by attorneys Bruce Ringstrom, Jr., and Dane DeKrey, who appeared in person.

The Court hereby makes the following:

**ORDER**

1. The Defendant’s motion to continue the jury trial currently scheduled for January 27, 2025, is **GRANTED**. The trial shall be rescheduled within 60 days of May 19, 2025, the end of the legislative session.
2. The attached Memorandum is incorporated herein by reference.

Dated this 17th day of January, 2025.

BY THE COURT:

\_\_\_\_\_  
 Michael D. Fritz, District Judge

## MEMORANDUM

The Defendant has filed a motion to continue the jury trial currently scheduled to begin on January 27, 2025. The Defendant requests the trial be continued until after May 19, 2025, which will be when this year's legislative session concludes. The motion is made pursuant to Minn. Stat. § 3.16 which states:

### **3.16 MEMBERS, OFFICERS, AND ATTORNEYS EXCUSED FROM COURT DUTY.**

No member or officer of, or attorney employed by, the legislature shall be compelled to attend as a witness in a court of this state during a session of the legislature, or while attending a meeting of a legislative committee or commission when the legislature is not in session unless the court in which the action is pending orders it, upon sufficient showing and with the consent of the presiding officer of the body of which the witness is an employee or the consent of the body of which the witness is a member. No cause or proceeding, civil or criminal, in court or before a commission or an officer or referee of a court or commission or a motion or hearing on the cause or proceeding, in which a member or officer of, or an attorney employed by, the legislature is a party, attorney, or witness shall be tried or heard during a session of the legislature or while the member, officer, or attorney is attending a meeting of a legislative committee or commission when the legislature is not in session. The matter shall be continued until the legislature or the committee or commission meeting has adjourned.

The member, officer, or attorney may, with the consent of the body of the legislature of which the person is a member, officer, or employee, waive this privilege. The cause or proceeding, motion, or hearing may then be tried or heard at a time that will not conflict with legislative duties.

On January 10, 2025, the State filed a demand for a speedy trial pursuant to Rule 11.09 of the Minnesota Rules of Criminal Procedure. Minn. R. Crim. P. 11.09(b) states, in relevant part, "On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date." The State objects to the defense's request for a continuance and argues that its speedy trial demand, pursuant to the rules, directly conflicts with Minn. Stat. § 3.16. The State further cites Minn. Stat. § 480.059 subd. 7, which states:

**Subd. 7. Effect upon statutes.**

Present statutes relating to the pleadings, practice, procedure, and the forms thereof in criminal actions shall be effective until modified or superseded by court rule. If a rule is promulgated pursuant to this section which is in conflict with a statute, the statute shall thereafter be of no force and effect.

“In matters of procedure rather than substance, the Rules of Criminal Procedure take precedence over statutes to the extent that there is any inconsistency.” *State v. Cermak*, 350 N.W.2d 328, 331 (Minn.1984); *State v. Keith*, 325 N.W.2d 641, 642 (Minn.1982). The legislature, for its part, determines matters of substantive law and has carefully protected that prerogative by providing that the Rules of Criminal Procedure “shall not abridge, enlarge, or modify the substantive rights of any person.” Minn. Stat. § 480.059, subd. 1. The issue here is whether Minn. Stat. § 3.16 is procedural or substantive in nature. The State argues that Minn. Stat. § 3.16 is procedural and therefore Rule 11.09 takes precedence over the statute. The Defense argues the rule and the statute are not in conflict, but if they are the statute is substantive and should take precedence over the rule.

Minn. Stat. § 3.16 and the caselaw interpreting it use mandatory language throughout, as it directs that “[n]o cause or proceeding, civil or criminal,” in which a legislator is a party, attorney or witness shall be tried or heard during a session of the legislature. The statute directs that the matter “*shall be continued* until the legislature ... has adjourned.” (emphasis added). The statute provides for no exceptions. The limited caselaw addressing the statute identifies that it authorizes the postponement of a judicial proceeding in which a legislator is involved as a party while the Legislature is in session. The statute creates a privilege for legislators, which they are free to exercise or waive, to continue court proceedings until the legislative session is concluded. *See State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 317-18 (Minn. App. 2007); *see also State ex rel. Johnson v. Independent School Dist. No. 810, Wabasha County*, 109

N.W.2d 596 at 602 (Minn. 1961) (Stating it is clear from the provisions of the statute that public policy requires that members of the Legislature, who are also attorneys in private practice, are not called away from their legislative duties during the session of the Legislature.)

The circumstances of this case fall squarely within the purview of Minn. Stat. § 3.16. The Defendant is an elected member of the Minnesota State Senate. She is a party to this action. The trial is scheduled to begin on January 27, 2025, which is during this year's legislative session. The Defendant has chosen to exercise her privilege in this case and not waive it. The State argues that the Court has complete discretion whether to continue this matter. However, under the plain and unambiguous language of the statute there is no discretion. The Court has no discretion and no ability to abridge or modify the Defendant's statutory privilege. As the Minnesota Supreme Court said in *State v. Heaney*, 689 N.W.2d 168 (Minn. 2004):

Privileges are not like other rules of evidence and hold a unique place in the law. A question of privilege is an evidentiary question, ...but it has a substantive component. .... They are created to substantively protect a particular type of relationship deemed valuable to society in general.

*Id.* at 174.

There is no question here that Minn. Stat. § 3.16 creates a privilege for members of the Legislature. The statute specifically identifies it as such, “[t]he member, officer, or attorney may, with the consent of the body of the legislature of which the person is a member, officer, or employee, waive *this privilege*.” (emphasis added). In this case, the statutory privilege afforded to members of the Legislature is substantive. The privilege ensures that legislators can fulfill their duties to the people of Minnesota and ensures that their constituents are represented during the session. The statute allows legislators to continue not only trials, but *any* type of hearing in a civil or criminal proceeding until the Legislature has adjourned. The

privilege here covers not only members of the Legislature, but officers and attorneys employed by the Legislature as well. Further, the privilege cannot be waived merely by the legislator alone. A valid waiver also requires the consent of the body of the Legislature of which the person is a member. The statute also covers officers and certain employees of the Legislature. The breadth of the statute identifies that the Legislature was deeply concerned with making sure court proceedings would not threaten the functions of the legislative branch while in session. Because the statute is substantive, it takes precedence over Minn. R. Crim. P. 11.09, and the Defendant's request for a continuance, therefore, requires priority over the State's demand for a speedy trial.

The State requests this Court to deny a continuance based on the level of the offense alleged. However, the statute does not differentiate between types of offenses. By its plain language the statute applies to any criminal charge. The State calls into question the wisdom of this law and made policy arguments against the statute. This Court must follow the law as it is written. Minn. Stat. § 3.16 clearly identifies that legislators have a privilege which allows them to continue a court proceeding, trial included, until after the legislative session if they wish.

The Defendant is also entitled to a continuance based upon the good cause exception to the speedy trial demand. A Rule 11.09 speedy trial demand requires that the trial start within 60 days "unless the court finds good cause for a later trial date." There are four factors courts are to consider when determining whether good cause exists to go beyond a speedy trial deadline: the length of delay, the reason for the delay, whether the defendant asserted his or her right to a speedy trial, and any prejudice to a defendant. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L. Ed. 2d 101 (1972). While these factors were created in the specific context of protecting a *defendant's* right to a speedy trial, and do not specifically address a demand by the State for a speedy trial, they are nevertheless useful in analyzing whether good cause exists to

continue the trial here.

First, the proposed length of delay is not unreasonable. The Defendant requests to try this case after the legislative session concludes in May 2025. That is not an excessively long delay for a felony case which is less than a year old. This is also the first request for a continuance in this matter. This case has not been unduly delayed or prolonged.

Second, the reason for the delay is that the Defendant wants to be able to represent her constituents during the legislative session. This is not an illegitimate reason to request a continuance, as it is specifically permitted by Minn. Stat. § 3.16.

The third and fourth factors are not applicable to this case. The Defendant has not asserted her right to a speedy trial, and there is no prejudice to the Defendant because she is the party who has requested the continuance. Regarding any possible prejudice to the State, Mr. McDonald indicated that their disclosures contain several statements made by the Defendant that the alleged victim has Alzheimer's. However the State did not argue that the strength of their case would be prejudiced in any way by a delay. Based on an analysis of the *Barker* factors, the Court finds good cause exists to continue the trial beyond the 60 days from the State's speedy demand.

Caselaw provides other measured examples of good cause to go beyond the 60-day trial deadline. Courts have found good cause can exist when a key witness is unavailable. *State v. Mikell*, 960 N.W.2d 230 (Minn. 2021). Additionally, delays due to changes in counsel, administrative delays, and scheduling issues involving counsel can also constitute good cause, provided the delay is minimal and necessary under the circumstances. *State v. Letourneau*, 6 N.W.3d 73 (Minn. 2024). The circumstances here present a compelling case to find good cause. If a legislator is forced to stand trial during the legislative session, their constituents would be

without a voice during that session. It is apparent that Minn. Stat. § 3.16 was enacted to avoid this very situation.

Finally, interests of comity between the branches of government also dictate that the Court apply Minn. Stat. § 3.16 and grant the continuance request here. *See State v. Johnson*, 514 N.W.2d 551, 554 (Minn. 1994) (“[D]ue respect for coequal branches of government requires this court to exercise great restraint ... particularly when the consideration involves what is a legislative function and what is a judicial function,” and “of course, if the Legislature passes a statute in an area not already governed by a rule, the court, as a matter of comity, may let it stand.”); *State v. Lemmer*, 736 N.W.2d 650, 663 (Minn. 2007) (“When a statute encroaches upon a judicial function, this court may permit the statute to stand as a matter of comity so long as the statute does not conflict with the court’s inherent authority to make the final decision.”); *State v. Chauvin*, 723 N.W.2d 20, 24 (Minn. 2006) (“[A] court has inherent judicial authority to engage in activities that are (1) necessary (2) to achieve a unique judicial function (3) without infringing on equally important legislative or executive functions.”); *State v. Breaux*, 620 N.W.2d 326, 332 (Minn. Ct. App. 2001) (refusing to invalidate legislative enactment of rule that encroached upon rule of criminal procedure, “not as any acknowledgment of legislative authority but strictly as a matter of comity.”). This case presents precisely the type of situation that triggers comity-based concerns. Granting a continuance does not infringe upon this Court’s inherent judicial authority.

M.D.F.