

**FORM 39 - REQUEST FOR DETERMINATION OF COMPETENCY  
TO PROCEED PRO SE ON APPEAL**

STATE OF MINNESOTA  
IN COURT OF APPEALS (SUPREME COURT)

\_\_\_\_\_,  
Respondent,

REQUEST FOR DETERMINATION  
OF COMPETENCY TO PROCEED  
PRO SE ON APPEAL

vs.

\_\_\_\_\_,  
Appellant.

D.C. File No. \_\_\_\_\_  
Appellate Court File No. \_\_\_\_\_

TO THE ABOVE-NAMED COURT:

I, \_\_\_\_\_, appellant in the above-entitled case, represent and state as follows:

1. My full name is \_\_\_\_\_. I am \_\_\_ years old, my date of birth is \_\_\_\_\_.

2. I have been convicted of \_\_\_\_\_, a felony (gross misdemeanor), in \_\_\_\_\_ County District Court. I was sentenced to \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_.

3. I understand that I have the right to appeal my conviction to the (Court of Appeals) (Supreme Court), and that because I am indigent I have the right to be represented by the State Public Defender.

4. Notwithstanding my right to be represented on appeal by the State Public Defender, I wish to waive that right and represent myself on appeal pro se. I understand that by this waiver I am permanently waiving my right to the assistance of the attorneys in the State Public Defender's Office or any other attorney retained at public expense. I understand that the Supreme Court has said that if I choose to act as my own attorney, I will not receive any legal advice, research, library materials, or other assistance from the State Public Defender in any state court proceeding to challenge the legality of my conviction and/or sentence. In other words, as to any challenge of this conviction and/or sentence, I am on my own.

I further understand that I will have to do the necessary legal work on this appeal by myself. This includes complying with the limited time schedules required for appeals, the legal requirements as to the substantive content of briefs and other documents, the size of briefs, the number of copies of briefs and other documents required to be filed, and proper service on the necessary parties. I understand that the State Public Defender will not be available to answer any questions I have in this regard, nor can I expect the Clerk of Appellate Courts to answer any such questions. I acknowledge that the Supreme Court has said that I will be held to the same standard of responsibility as a licensed attorney. I understand that I

may not later claim that because I made mistakes while representing myself on appeal that I am entitled to a new appeal.

5. I certify that I do not have the funds to pay for the necessary transcripts and I acknowledge that the Court will have access to any information regarding my finances.

6. I understand that a copy of the transcript will be made available to me by the State Public Defender. In order for my brief to be accepted for filing by the Court of Appeals (Supreme Court) the Supreme Court has said that I will have to return the entire transcript in an undamaged condition to the State Public Defender before the time for preparing, filing and serving the brief has expired. Failure to do so could result in the dismissal of my appeal. Additionally, failure to return the transcript, which is state property, is a violation of Rule 19 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system. Any destruction, damage or alteration of the transcript is a violation of Rule 27 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system.

I further understand that I cannot make the transcript available to any other inmate or other person, but it must remain in my personal possession until returned to the State Public Defender.

7. I understand that the Supreme Court has said no library services are required to be made available to me other than those available to other inmates in the institution.

8. I understand that all existing legal issues with respect to my present conviction and/or sentence must be raised by me in this court proceeding or they will be waived for the purpose of any further state or federal court proceedings.

9. I understand that I will not be permitted to be personally present to argue my case to the appellate court, nor will any other person appear on my behalf.

10. I understand that Minnesota Statutes, section 481.02, subdivision 1, makes it a crime for any person who is not a lawyer to give legal advice or assistance to another person. Additionally, Rule 4 of the Inmate Discipline Regulations prohibits one inmate from performing unauthorized tasks for another inmate. I understand that I may be required to certify that the brief I file was prepared by me before my brief will be accepted for filing by the Clerk of Appellate Courts.

11. I understand that if an attorney, other than an attorney from the State Public Defender's Office or any other attorney retained at public expense, agrees to assist me that the attorney must first agree to represent me through exhaustion of all state court remedies. In that case I would return the transcript to the State Public Defender so arrangements could be made to get the transcript to the private attorney.

12. I understand that in waiving assistance of the State Public Defender on appeal, I am certifying that I am competent to make this decision, that I am not under the influence of any

drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself on appeal, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me on appeal.

13. I understand that the Supreme Court has said that I will not be permitted to represent myself on appeal in this case if there is a question as to my competence to proceed pro se. I understand that the Supreme Court has also said that it is the district court that will decide if I am competent to make this decision. I HEREBY REQUEST THE DISTRICT COURT TO REVIEW MY CASE AND MAKE A DETERMINATION AS TO MY COMPETENCE.

I hereby acknowledge that I have read or have had read to me the above-entitled waiver and that I have been advised by the State Public Defender as to the risks involved in proceeding pro se and that I understand those risks and am voluntarily waiving my right to be represented by the State Public Defender.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Appellant

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Effective for criminal actions commenced or arrests made after 12 o'clock midnight January 1, 1990.)