STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

OFFICE OF
APPELLATE COURTS

OCT 27 2009

FILED

ORDER PROMULGATING AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

ORDER

The Supreme Court Advisory Committee on the Rules of Criminal Procedure filed a report on April 22, 2009, recommending a complete stylistic revision of the rules. By order dated April 23, 2009, this court set the matter on for a public hearing on June 30, 2009, and established a June 24, 2009 deadline for submitting written comments on the proposed amendments. The court reviewed the proposed amendments and submitted comments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective on January 1, 2010.

2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.

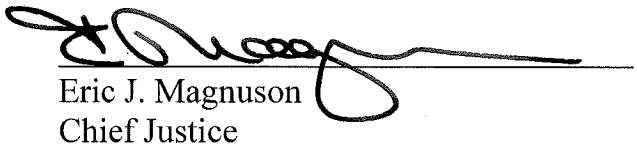
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments.

4. The Advisory Committee shall continue to serve and monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the court from time to time.

5. A document detailing the revisions to the rules shall be posted online at the judicial branch's homepage: http://www.mncourts.gov.

DATED: October 27, 2009

BY THE COURT:



Eric J. Magnuson
Chief Justice

Minnesota Rules of Criminal Procedure

Rule 1. Scope and Purpose of the Rules

Rule 1.01 Scope and Application

These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the district courts in the State of Minnesota.

Rule 1.02 Purpose and Construction

These rules are intended to provide a just determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay. The rules must be applied without discrimination based upon race, color, creed, religion, national origin, sex, marital status, public-assistance status, disability, including disability in communication, sexual orientation, or age.

Rule 1.03 Local Rules by District Court

A court may recommend local rules governing its practice if they do not conflict with these rules or with the General Rules of Practice for the District Courts. Local rules become effective only if ordered by the Supreme Court.

Rule 1.04 Definitions

(a) Misdemeanor. Unless these rules direct otherwise, "misdemeanor," as used in these rules, includes state statutes, local ordinances, charter provisions, or rules or regulations punishable – either alone or alternatively – by a fine or imprisonment of not more than 90 days.

(b) Designated Gross Misdemeanor. As used in these rules, "designated gross misdemeanor" is a gross misdemeanor charged or punishable under Minnesota Statutes, sections 169A.20, 169A.25, 169A.26, or 171.24.

(c) Tab Charge. As used in these rules, "tab charge" is a brief statement of the charge entered in the record by the court administrator that includes a reference to the statute, rule, regulation, ordinance, or other provision of law the defendant is alleged to have violated. A tab charge is not synonymous with "citation" as defined by Rule 6.01.

(d) Aggravated Sentence. As used in these rules, "aggravated sentence" is a sentence that is an upward durational or dispositional departure from the presumptive sentence provided for in the Minnesota Sentencing Guidelines based on aggravating circumstances or a statutory sentencing enhancement.

Rule 1.05 Use of Interactive Video Teleconference in Criminal Proceedings

Subd. 1. Definitions.

(1) ITV. "ITV" refers to interactive video teleconference.

(2) Terminal Site. A "terminal site" is any location where ITV is used for any part of a court proceeding.

(3) Venue County. The "venue county" is the county where pleadings are filed and hearings are held under current court procedures.

(4) District. The "district" is the judicial district in which the venue county is located.

Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure must be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 2, and by phone in Rule 26.03, subd. 1(3)4.

Subd. 3. Permissible Use of ITV.

(1) Felony and Gross Misdemeanor Proceedings. ITV may be used in felony and gross misdemeanor proceedings to conduct the following criminal hearings:

(a) Rule 5 or Rule 6 Hearings. A defendant in custody may appear by ITV before any available judge of the district for a Rule 5 or Rule 6 hearing if no judge is available in the venue county.

(b) Rule 8 Hearings. A defendant may appear by ITV before any available judge of the district for a Rule 8 hearing if no judge is available in the venue county. No plea of guilty may be taken by ITV unless the court and all parties agree, and the defendant and defendant's attorney are located at the same terminal site.

(c) Rule 11 Hearings. A defendant may appear by ITV before any available judge of the district for the purpose of waiving an omnibus hearing.

(d) Other Hearings. A defendant or the defendant's counsel on behalf of the defendant may appear by ITV before any available judge of the district for any hearing for which the defendant's personal presence is not required under Rule 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.

ITV cannot be used to conduct a trial, sentencing, contested omnibus hearing, or any other contested matter except as provided in this rule.

(2) Misdemeanor Proceedings. A defendant may appear by ITV in misdemeanor proceedings before any available judge of the district for any of the following:

(a) Arraignment;
(b) Plea;
(c) Sentencing.

A defendant or the defendant's counsel on behalf of the defendant may also appear by ITV before any available judge of the district for any hearing for which the defendant's personal presence is not required under Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.

ITV cannot be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided in this rule.

(3) Petty Misdemeanor and Regulatory or Administrative Criminal Offenses. A defendant may appear by ITV before any available judge of the district for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.

Subd. 4. Request for In-Person Hearing; Consent Requirements.

(1) Rule 5 or Rule 6 Hearings. When a defendant appears before the court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within 3 business days of the ITV hearing and is deemed a continuance of the ITV hearing.

(2) Other Hearings; Consent. In all proceedings other than a Rule 5 or Rule 6 hearing, the defendant must consent to appearing by ITV. If the defendant does not consent to appear by ITV, an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by these rules or other law.

Subd. 5. Location of Participants.

(1) Defendant's Attorney. The defendant and the defendant's attorney must be present at the same terminal site except in unusual or emergency circumstances, and then only if all parties agree on the record. This exception for unusual or emergency circumstances does not apply to felony or gross misdemeanor proceedings at which a guilty plea is taken.

(2) Prosecutor. Subject to paragraph (4), the prosecutor may appear from any terminal site.

(3) Judge. Subject to paragraph (4), the judge may appear from any terminal site.

(4) Defendant's Attorney or Prosecutor at Same Terminal Site as Judge. When the right to counsel applies, ITV cannot be used in a situation in which only the defense attorney or prosecutor is physically present before the judge unless all parties agree on the record.

(5) Witnesses, Victims, Other Persons. Witnesses, victims, and other persons may be located at any terminal site.

Subd. 6. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by any judge of that district. Cases from other districts may be heard if authorized by the Chief Justice of the Supreme Court.

Subd. 7. Proceedings; Record; Decorum.

(1) Where Conducted. All ITV hearings must be conducted in a courtroom or other room at the courthouse reasonably accessible to the public.

(2) Effect of ITV Hearing. Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing has the same effect as if done in person.

(3) Defendant Right to Counsel. The court must ensure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private.

(4) Record. The court administrator of the venue county must keep court minutes and maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter must be in simultaneous voice communication with all ITV terminal sites, and must make the appropriate verbatim record of the proceeding as if heard in person. No recording of the ITV proceeding other than

the recording made as the official court record is permitted.

(5) Decorum. Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site.

Subd. 8. Administrative Procedures. Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.

Rule 1.06 Use of Electronic Filing for Charging Documents

Subd. 1. Definitions.

(1) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.

(2) E-filing. "E-filing" is the electronic transmission of the charging document to the court administrator.

Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document except an indictment.

Subd. 3. Signatures.

(1) How Made. All signatures required under these rules must be affixed electronically if the charging document is e-filed.

(2) Signature Standard. Each signature affixed electronically must comply with the electronic signature standard approved by the State Court Administrator, except that electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification.

(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.

Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law.

Subd. 5. Paper Submission. E-filed documents are in lieu of paper submissions. An e-filed document should not be transmitted to the court administrator by any other means unless the court requests a printed copy.

Subd. 6. Scope and Effective Date. This is a temporary rule effective in the following counties for participants in the eCharging/e-filing pilot project: Carver, Kandiyohi, Olmsted, and St. Louis. The rule is effective December 1, 2008, and for two years afterwards, unless earlier abrogated by Supreme Court order.

Comment—Rule 1

Beyond the procedures required by these rules, prosecutors, courts, and law enforcement agencies should also be aware of the rights of crime victims as provided in chapter 611A of the Minnesota Statutes.

Rule 1.04 (d) defines "aggravated sentence" for the purpose of the provisions in these rules governing the procedure that a sentencing court must follow to impose an upward sentencing departure in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 (2004). On June 24, 2004, the United States Supreme Court decided in Blakely that an upward departure in sentencing under the State of Washington's determinate sentencing system violated the defendant's Sixth Amendment rights where the additional findings required to justify the departure were not made beyond a reasonable doubt by a jury. The definition is in accord with existing Minnesota case law holding that Blakely applies to upward departures under the Minnesota Sentencing Guidelines and under various sentencing enhancement statutes requiring additional factual findings. See, e.g., State v. Shattuck, 704 N.W.2d 131, 140-142 (Minn. 2005) (durational departures); State v. Allen, 706 N.W.2d 40, 44-47 (Minn. 2005) (dispositional departures); State v. Leake, 699 N.W.2d 312, 321-324 (Minn. 2005) (life sentence without release under Minnesota Statutes, section 609.106); State v. Barker, 705 N.W.2d 768, 771-773 (Minn. 2005) (firearm sentence enhancements under Minnesota Statutes, section 609.11); and State v. Henderson, 706 N.W.2d 758, 761-762 (Minn. 2005) (career offender sentence enhancements under Minnesota Statutes section 609.1095, subd. 4).

These Blakely-related protections and procedures do not apply retroactively to sentences that were imposed and were no longer subject to direct appeal by the time that Blakely was decided on June 24, 2004. State v. Houston, 702 N.W.2d 268, 773 (Minn. 2005). Also, the protections and procedures do not apply to sentencing departures and enhancements that are based solely on a defendant's criminal conviction history such as the assessment of a custody status point under the Minnesota Sentencing Guidelines. State v. Allen, 706 N.W.2d 40, 47-48 (Minn. 2005).

For aggravated sentence procedures related to Blakely, see Rule 7.03 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by complaint); Rule 9.01, subd. 1(7) (discovery of evidence relating to an aggravated sentence); Rule 11.04, subd. 2 (Omnibus Hearing decisions on aggravated sentence issues); Rule 15.01, subd. 2 and Appendices E and F (required questioning and written petition provisions concerning defendant's admission of facts supporting an aggravated sentence and accompanying waiver of rights); Rule 19.04, subd. 6 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by indictment); Rule 26.01, subd. 1(2)(b) (waiver of right to a jury trial determination of facts supporting an aggravated sentence); Rule 26.01, subd. 3 (stipulation of facts to support an aggravated sentence and accompanying waiver of rights); Rules 26.03, subd. 18(1) and (3) (motion that evidence submitted to jury was insufficient to support an aggravated sentence); Rule 26.03, subd. 19(7) (verdict forms); Rule 26.03, subd. 20(5) (polling the jury); and Rule 26.04, subd. 1 (new trial on aggravated sentence issue). The procedures provided in these rules for the determination of aggravated sentence issues supersede the procedures concerning those issues in Minnesota Statutes, section 244.10 (see 2005 Minnesota Laws, chapter 136, article 16, sections 3-6) or other statutes.

The signatures of the following persons must be affixed electronically when a complaint is e-filed pursuant to Rule 1.06:

- *the complainant, as required under Rule 2.01, subd. 1;*
- *the judge, court administrator, or notary public before whom a complaint is made upon oath, as required under Rule 2.01, subd. 2;*
- *the prosecutor, as required under Rule 2.02; and*
- *the judge, indicating a written finding of probable cause, as required under Rule 4.03, subd. 4.*

There are currently no signature requirements in the rules for citations or tab charges.

It is anticipated that if a complaint is commenced electronically, any actor in the chain (e.g., prosecutor or judge) could choose to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the

hard copy complaint are valid so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2).

Electronic Notarization, as required under Rule 1.06, subd. 4, is governed by Minnesota Statutes, chapters 358 and 359.

Rule 2. Complaint

Rule 2.01 Contents; Before Whom Made

Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, except as modified by Rules 6.01, subd. 4, 11.08, and 15.08. The probable cause statement can be supplemented by supporting affidavits or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.

Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, except as otherwise provided in Rules 11.08 and 15.08. If sworn witness testimony is taken under subdivision 3, the oath must be administered by a judge, but the oath may be administered by telephone, ITV, or similar device.

Subd. 3. Witness Testimony; How Made. If the court takes sworn witness testimony, the court must note that fact on the complaint. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed.

Subd. 4. Probable Cause Determination. The judge must determine whether probable cause exists to believe an offense has been committed and the defendant committed it. When the alleged offense is punishable by a fine only, the probable cause determination can be made by the court administrator if authorized by court order.

Rule 2.02 Approval of Prosecutor

A complaint must not be issued without the prosecutor's signature, unless a judge certifies on the complaint that the prosecutor is unavailable and that issuance of the complaint should not be delayed.

Comment—Rule 2

Rule 2.01 notes exceptions to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation. Rules 11.08 and 15.08, which authorize the substitution of a new complaint to permit a plea to a misdemeanor or different offense, do not require a showing of probable cause.

Even if affidavits, testimony, or other reports supplement the complaint, the complaint must still include a statement of the facts establishing probable cause. Under this rule, the complaint and any supporting affidavits can be sworn to before a court administrator or notary public. The documents can then be submitted to the judge or judicial officer by any method permitted under the rule and the law enforcement officer or other complainant need not personally appear before the judge. However, if sworn oral testimony is taken to supplement the complaint, it must be taken before the judge and cannot be taken before a court administrator or notary public.

The prosecutors referred to in Rule 2.02 are those authorized by law to prosecute the offense charged. See Minn. Stat. § 484.87 (allocating prosecutorial responsibilities amongst city, township, and county prosecutors); Minn. Stat. §§ 8.01and 8.03 (Attorney General); Minn. Stat. § 388.051 (County Attorney).

Rule 2.02 does not define the remedy available when a local prosecutor refuses to approve a complaint.

Because the complaint is accessible to the public, and documents supporting the statement of probable cause can contain irrelevant material that is injurious to innocent third persons, as well as material prejudicial to the defendant's right to a fair trial, it is recommended that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material be omitted.

Rule 3. Warrant or Summons upon Complaint

Rule 3.01 Issuance

If the facts in the complaint and any supporting affidavits or supplemental sworn testimony establish probable cause to believe an offense has been committed and the defendant committed it, a summons or warrant must issue. A summons rather than a warrant must issue unless a substantial likelihood exists that the defendant will fail to respond to a summons, the defendant's location is not reasonably discoverable, or the defendant's arrest is necessary to prevent imminent harm to anyone. A warrant for the defendant's arrest must be issued to any person authorized by law to execute it.

The warrant or summons must be issued by a judge of the district court. If the offense is punishable by fine only, a court administrator may issue the summons when authorized by court order.

A summons must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.

A judge must issue a summons whenever requested to do so by the prosecutor.

If a defendant fails to appear in response to a summons, a warrant must issue.

Rule 3.02 Contents of Warrant or Summons

Subd. 1. Warrant. The warrant must be signed by a judge and must contain the name of the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It must describe the offense charged in the complaint. The warrant and complaint may be combined in one form. For all offenses, the amount of bail must be set, and other conditions of release may be set, by a judge and endorsed on the warrant.

Subd. 2. Directions of Warrant. The warrant must direct that the defendant be brought promptly before the court that issued the warrant if the court is in session.

If the court specified is not in session, the warrant must direct that the defendant be brought before the court without unnecessary delay, and not later than 36 hours after the arrest, exclusive of the day of arrest, or as soon as a judge is available.

Subd. 3. Summons. The summons must summon the defendant to appear at a stated time and place to answer the complaint before the court issuing it, and must be accompanied by a copy of the complaint.

Rule 3.03 Execution or Service of Warrant or Summons; Certification

Subd. 1. By Whom. The warrant must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail, it may also be served by the court administrator.

Subd. 2. Territorial Limits. The warrant may be executed or the summons may be served at any place within the State, except where prohibited by law.

Subd. 3. Manner. A warrant is executed by the defendant's arrest. If the offense charged is a misdemeanor, the defendant must not be arrested on Sunday or, on any other day of the week, between the hours of 10:00 p.m. and 8:00 a.m. except, when exigent circumstances exist, by direction of the judge, stated on the warrant. A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession when the arrest occurs, but must inform the defendant of the warrant's existence and of the charge.

The summons must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of abode with a person of suitable age and discretion residing there, or by mailing it to the defendant's last known address. A summons directed to a corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.

Subd. 4. Certification; Unexecuted Warrant or Summons. The officer executing the warrant must certify the execution to the court before which the defendant is brought.

On or before the date set for appearance, the officer or clerk of court to whom a summons was delivered for service must certify its service to the court before which the defendant was summoned to appear.

At the prosecutor's request, an unexecuted warrant, an unserved summons, or a duplicate may be delivered by a judge to any authorized officer or person for execution or service.

Rule 3.04 Defective Warrant, Summons or Complaint

Subd. 1. Amendment. A person arrested under a warrant or appearing in response to a summons must not be discharged from custody or dismissed because of any defect in form in the warrant or summons if the warrant or summons is amended to remedy the defect.

Subd. 2. Issuance of New Complaint, Warrant or Summons. Pre-trial proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued if the prosecutor promptly moves for a continuance on the ground that:

(a) the initial complaint does not properly name or describe the defendant or the offense charged; or
(b) the evidence presented establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and the prosecutor intends to charge the defendant with that offense.

If the proceedings are continued, the new complaint must be filed and process promptly issued. In misdemeanor cases, if the defendant during the continuance is unable to post bail that might be required

under Rule 6.02, subd. 1, then the defendant must be released subject to such non-monetary conditions as the court deems necessary under that Rule.

Comment—Rule 3

Rule 3.01 does not define probable cause for the purpose of obtaining a warrant of arrest or to prescribe the evidence that may be considered on that issue. These issues are determined by federal Fourth Amendment constitutional law. See e.g., State ex rel. Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (1966); State v. Burch, 284 Minn. 300, 170 N.W.2d 543 (1969).

See Rule 4.02, subd. 5(3) for restrictions on the issuance of a warrant for an offense for which the prosecution has obtained a valid complaint after the time in which the court had ordered the complaint to be prepared.

Issuance of a warrant instead of a summons should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings. In overcoming the presumption for issuing a summons rather than a warrant, the prosecutor may, among other factors, cite to the nature and circumstances of the particular case, the past history of response to legal process and the defendant's criminal record. The remedy of a defendant who has been arrested by warrant is to request the imposition of conditions of release under Rule 6.02, subd. 1 upon the initial court appearance.

Minnesota law requires that the defendant be taken before the court "without unreasonable delay." See, e.g., Stromberg v. Hansen, 177 Minn. 307, 225 N.W. 148 (1929). See also Minn. Stat. § 629.401. Rule 3.02, subd. 2 imposes more definite time limitations while permitting a degree of flexibility. The first limitation (Rule 3.02, subd. 2) is that the defendant must be brought directly before the court if it is in session. The second limitation (Rule 3.02, subd. 2) is that if the court is not in session, the defendant must be taken before the nearest available judge of the issuing court without unnecessary delay, but not more than 36 hours after the arrest or as soon after the 36-hour period as a judge of the issuing court is available.

In computing the 36-hour time limit in Rule 3.02, subd. 2, the day of arrest is not counted. The 36 hours begin to run at midnight following the arrest. Also, Rule 34.01 expressly does not apply to Rule 3.02, subd. 2. Saturdays are to be counted in computing the 36-hour time limit under this rule. See also Rule 4.02, subd. 5.

The provisions of Rule 3.03, subd. 2 that a warrant may be executed or a summons served at any place within the State is in accord with existing law governing service of criminal process. The phrase "except where prohibited by law" was added to exclude those places, such as federal reservations, where state service of process may be prohibited by law.

For service of summons on corporations, Rule 3.03, subd. 3 adopts the method prescribed by law for service of process in civil actions. See Minn.R.Civ.P. 4.03(c).

Rule 4. Procedure upon Arrest With a Warrant Following a Complaint or Without a Warrant

Rule 4.01 Arrest With a Warrant

A defendant arrested with a warrant must be taken before a judge as directed in the warrant.

Rule 4.02 Arrest Without a Warrant

Following an arrest without a warrant:

Subd. 1. Release by Arresting Officer. If the arresting officer or the officer's superior determines that further detention is not justified, the arrested person must be immediately released.

Subd. 2. Citation. The arresting officer or the officer's superior may issue a citation and release the arrested person, and must do so if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred.

Subd. 3. Notice to Prosecutor. The arresting officer or the officer's superior must notify the prosecutor of the arrest as soon as practicable.

Subd. 4. Release by Prosecutor. The prosecutor may order the arrested person released from custody.

Subd. 5. Appearance Before Judge.

(1) Before Whom and When. An arrested person who is not released under this rule or Rule 6, must be brought before the nearest available judge of the county where the alleged offense occurred. The defendant must be brought before a judge without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon as a judge is available. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting affidavits or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released, the complaint and any supporting papers must not be filed, and no record made of the proceedings.

(3) Complaint or Tab Charge; Misdemeanors; Designated Gross Misdemeanors. If no complaint is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross misdemeanor charge for offenses designated under Rule 1.04(b), the court administrator must enter upon the records a tab charge, as defined in Rule 1.04(c) of these rules. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge, the complaint must be served and filed within 48 hours of the defendant's appearance on the tab charge if the defendant is in custody, or within 10 days of the appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02 and may include service by U.S. mail.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged, the complaint and any supporting papers must not be filed, and no record will be made of the proceedings.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting affidavits or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

Rule 4.03 Probable Cause Determination

Subd. 1. Time Limit. When a person arrested without a warrant is not released under this rule or Rule 6, a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or does not make a determination as to probable cause within the time provided by this rule, the person must be released immediately.

Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, must be submitted under oath, either orally or in writing. The oath may be administered by the court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device. Any oral testimony must be recorded by reporter or recording instrument and must be retained by the court or by the judge's designee.

The person requesting a probable cause determination must advise the reviewing judge of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.

Subd. 3. Prosecutor. No request for determination of probable cause may proceed without the approval of the prosecutor authorized to prosecute the matter, or by affirmation of the applicant that the applicant contacted the prosecutor and the prosecutor approved the request, or unless the judge reviewing probable cause certifies in writing that the prosecutor is unavailable and the determination of probable cause should not be delayed. A complaint complying with Rule 2, approved by the court, satisfies the probable cause requirement of this rule.

Subd. 4. Determination. If the information presented satisfies the court that probable cause exists to believe that an offense has been committed and the person arrested committed it, the court may set bail or other conditions of release, or release the arrested person without bail, under Rule 6. If probable cause is not found, the arrested person must be released immediately. The court's finding of probable cause must be in writing, and must indicate the offense, whether oral testimony was received, and the amount of any bail or other conditions of release the court may set. A written notice of the court's determination must be provided promptly to the arrested person.

Comment—Rule 4

It is anticipated that complaints will be requested by defendants in only a small percentage of

misdemeanor cases because discovery is permitted under Rule 9.04, and most defendants will not wish to make an additional appearance to receive the complaint.

Where a charge has been dismissed by the court for failure of the prosecutor to file a valid, timely complaint (Rule 4.02, subd. 5(3)) as required, and the prosecutor subsequently files a valid complaint, a summons must issue instead of a warrant. If it is impossible to locate the defendant to serve the summons or if the defendant fails to respond to the summons, a warrant may be issued. See also Rule 3.01. This restriction is necessary because it is unfair to subject a defendant to a possibly unnecessary arrest when the defendant has appeared in court once to answer the minor charge, and, through no fault of the defendant, a complaint was not issued.

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, 500 U.S. 44 (1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit. Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules.

Rule 4.03, subd. 4, sets out the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules.

Rule 5. Procedure on First Appearance

Rule 5.01 Purpose of First Appearance

(a) The purpose of the first appearance is for the court to inform the defendant of the:

(1) charge(s);
(2) defendant's rights, including the right to have counsel appointed if eligible; and
(3) opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08.

(b) The court must first determine whether a defendant is disabled in communication as defined in Rule 5.02.

(c) The court must ensure the defendant has a copy of the complaint, citation, or written tab charge.

(d) The court must set bail and other conditions of release under Rule 6.02.

(e) On the prosecutor's motion, the court must require that the defendant be booked, photographed, and fingerprinted.

Rule 5.02 Requirement for Interpreter

A defendant is disabled in communication if, due to a hearing, speech or other communications

disorder or difficulty in speaking or comprehending the English language, the defendant cannot fully understand the proceedings or any charges made, or is incapable of presenting or assisting in the presentation of a defense.

If a defendant is disabled in communication, the judge must appoint a qualified interpreter under Rule 8 of the Minnesota Rules of General Practice for the District Courts to assist the defendant throughout the proceedings. The proceedings that require a qualified interpreter include any proceeding attended by the defendant.

Rule 5.03 Statement of Rights

The court must advise the defendant of the following:

(a) The right to remain silent and not submit to interrogation;

(b) Anything the defendant says may be used against the defendant in this or any subsequent proceeding;

(c) The right to counsel in all proceedings, including police line-ups and interrogations;

(d) If the defendant appears without counsel and is financially unable to obtain counsel, counsel will be appointed if the defendant has been charged with an offense punishable by incarceration;

(e) The right to communicate with defense counsel, and that a continuance will be granted if necessary to permit this;

(f) The right to a jury trial or a trial to the court;

(g) If the offense is a misdemeanor, the defendant may plead guilty or not guilty, or demand a complaint before entering a plea;

(h) If the offense is a designated gross misdemeanor as defined in Rule 1.04(b) and a complaint has not yet been filed, a complaint must be issued within 10 days if the defendant is not in custody or within 48 hours if the defendant is in custody;

(i) If the offense is a gross misdemeanor and the defendant has had an opportunity to consult with an attorney, the defendant may plead guilty in accordance with Rule 15.01.

The court may advise a number of defendants at once of these rights, but each defendant must be asked individually at arraignment whether the defendant heard and understood the rights as explained earlier.

Rule 5.04 Appointment of Counsel

Subd. 1. Notice of Right to Counsel; Appointment of the District Public Defender; Waiver of Counsel.

(1) Notice of Right to Counsel. If a defendant charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration appears without counsel, the court must advise the defendant of the right to counsel, and that the court will appoint the district public defender if the defendant has been determined to be financially unable to obtain counsel.

The court must also advise the defendant that the defendant has the right to request counsel at any stage of the proceedings.

(2) Appointment of the Public Defender. The court must appoint the district public defender on request of a defendant who is:

(a) charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration, or subject to an extradition proceeding or probation revocation proceeding;
(b) not represented by counsel; and
(c) financially unable to obtain counsel.

The court must not appoint a district public defender if the defendant is financially able to retain private counsel but refuses to do so.

(3) Waiver of Counsel, Misdemeanor. Defendants charged with a misdemeanor punishable by incarceration who appear without counsel, do not request counsel, and wish to represent themselves, must waive counsel in writing or on the record. The court must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights. The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant about the waiver.

(4) Waiver of Counsel, Felony, Gross Misdemeanor. The court must ensure that defendants charged with a felony or gross misdemeanor who appear without counsel, do not request counsel, and wish to represent themselves, enter on the record a voluntary and intelligent written waiver of the right to counsel. If the defendant refuses to sign the written waiver form, the waiver must be made on the record. Before accepting the waiver, the court must advise the defendant of the following:

(a) nature of the charges;
(b) all offenses included within the charges;
(c) range of allowable punishments;
(d) there may be defenses;
(e) mitigating circumstances may exist; and
(f) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver.

Subd. 2. Appointment of Advisory Counsel. The court may appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel.

(1) If the court appoints advisory counsel because of concerns about fairness of the process, the court must state that on the record. The court must advise the defendant and advisory counsel on the record that the defendant retains the right to decide when and how to use advisory counsel, and that decisions about the use of advisory counsel may affect a later request by the defendant to allow advisory counsel to assume full representation.

(2) If the court appoints advisory counsel because of concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity or length of the trial, the court must state that on the record.

The court must then advise the defendant and advisory counsel on the record that advisory counsel will assume full representation of the defendant if the defendant:

(a) becomes so disruptive during the proceedings that the defendant's conduct is determined to constitute a waiver of the right of self representation; or

(b) requests advisory counsel to take over representation during the proceeding.

(3) Advisory counsel must be present in the courtroom during all proceedings and must be served with all documents that would otherwise be served upon an attorney of record.

Subd. 3. Standards for District Public Defender Eligibility. A defendant is financially unable to obtain counsel if the defendant meets the standards for eligibility defined in Minn. Stat. § 611.17.

Subd. 4. Financial Inquiry. The court has a duty to conduct a financial inquiry to determine the financial eligibility of a defendant for the appointment of a district public defender as required under Minn. Stat. § 611.17.

Subd. 5. Partial Eligibility and Reimbursement. The ability to pay part of the cost of adequate representation at any time while the charges are pending against a defendant must not preclude the appointment of the district public defender for the defendant. If the court, after finding the defendant eligible for district public defender services, determines that the defendant now has the ability to pay part of the costs, it may require a defendant to make partial payment as provided in Minn. Stat. § 611.20.

Rule 5.05 Date of Rule 8 Appearance; Consolidation of Appearances Under Rule 5 and Rule 8

If the defendant is charged with a felony or gross misdemeanor, the court must set a date for a Rule 8 appearance before the court having jurisdiction to try the charged offense no later than 14 days after the defendant's initial appearance under Rule 5, unless the defendant waives the right to a separate Rule 8 appearance.

The defendant must be informed of the time and place of the Rule 8 appearance and ordered to appear as scheduled. The time for appearance may be extended by the court for good cause.

In felony and gross misdemeanor cases, the defendant may waive the separate appearances otherwise required by this rule and Rule 8. The waiver must be made either in writing or on the record in open court. If the defendant waives a separate appearance under Rule 8, all of the functions and procedures provided for by Rules 5 and 8 must take place at the Rule 5 hearing.

Rule 5.06 Plea and Post-Plea Procedure in Misdemeanor Cases

Subd. 1. Entry of Plea in Misdemeanor Cases. In misdemeanor cases, the arraignment must be conducted in open court. The court must ask the defendant to enter a plea, or set a date for entry of the plea. A defendant may appear by counsel and a corporation must appear by counsel or by an authorized officer.

Subd. 2. Guilty Plea; Offenses From Other Jurisdictions. If the defendant enters a plea of guilty, the presentencing and sentencing procedures provided by these rules must be followed. The defendant may also request permission under Rule 15.10 to plead guilty to other misdemeanor offenses committed within the jurisdiction of other courts in the state.

Subd. 3. Not Guilty Plea and Jury Trial. If the defendant enters a plea of not guilty to a charge for

which the defendant would be entitled to a jury trial, the defendant must exercise or waive that right. The defendant may waive the right to a jury trial either on the record or in writing. If the defendant fails to waive or demand a jury trial, a jury trial demand must be entered in the record.

Subd. 4. Demand or Waiver of Evidentiary Hearing. If the defendant pleads not guilty and a notice of evidence and identification procedures has been given by the prosecutor as required by Rule 7.01, the defendant and prosecutor must each either waive or demand an evidentiary hearing under Rule 12.04. The demand or waiver may be made either on the record or in writing and must be made at the first court appearance after the notice has been given by the prosecutor.

Rule 5.07. Plea and Post-Plea Procedure in Gross Misdemeanor Cases

Subd. 1. Entry of Guilty Plea in Gross Misdemeanor Cases.

The defendant may plead guilty to a gross misdemeanor charge in accordance with Rule 15.01 if the defendant has counsel, or has had the opportunity to consult with counsel before pleading guilty. If the defendant does not plead guilty, entry of a plea must await the Rule 8 or Omnibus Hearing. A corporation must appear by counsel or by an authorized officer.

Subd. 2. Guilty Plea; Offenses From Other Jurisdictions.

The procedure in Rule 5.06, subd. 2 applies to gross misdemeanor cases.

Rule 5.08 Plea in Felony Cases

In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus hearing under Rule 11.

Rule 5.09 Record

Minutes of the proceedings must be kept unless the court directs that a verbatim record be made. Any plea of guilty to an offense punishable by incarceration must comply with the requirements of Rule 15.09.

Comment—Rule 5

Rule 5 prescribes the procedure at the defendant's initial appearance. In most misdemeanor cases, the initial appearance will also be the time of arraignment and disposition.

Rule 5.02 requires the appointment of a qualified interpreter for a defendant disabled in communication. Minn. Stat. § 611.32, subd. 1 mandates the appointment. The definition for "disabled in communication" contained in Rule 5.02 is the same as that contained in Minn. Stat. § 611.31. Minn. Stat. § 611.33 and Rule 8 of the Minnesota Rules of General Practice for the District Courts should be referred to for the definition of qualified interpreter.

The warning under Rule 5.03 as to the defendant's right to counsel continues the requirement of Minn. Stat. § 611.15. See St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972), recognizing that misdemeanors authorizing a sentence of incarceration are criminal offenses and criminal procedures must be followed.

Under Rules 5.03(i) and 5.07, a defendant may plead guilty to a gross misdemeanor at the first appearance under Rule 5 in accordance with the guilty plea provisions of Rule 15.01. If that is done, the

defendant must first have the opportunity to consult with an attorney. If the guilty plea is to a designated gross misdemeanor prosecuted by tab charge, a complaint must be filed before the court accepts the guilty plea. See Rule 4.02, subd. 5(3), and the comments to that rule. See also Rule 5.04, subd. 1(4), concerning waiver of the right to counsel. Rule 5.03(i) does not permit a defendant to enter a plea of not guilty to a gross misdemeanor at the first appearance under Rule 5. Rather, in accordance with Rules 8.01 and 11.08, a not-guilty plea in felony and gross misdemeanor cases is not entered until the Omnibus Hearing or later.

Minnesota law requires that a waiver of counsel be in writing unless the defendant refuses to sign the written waiver form. In that case, a record of the waiver is permitted. Minn. Stat. §611.19. In practice, a Petition to Proceed As Pro Se Counsel may fulfill the dual requirements of providing the defendant with the information necessary to make a voluntary and intelligent waiver of the right to counsel as well as providing a written waiver. See Form 11. Also see Appendix C to Rule 15 for the Petition to Enter Plea of Guilty by Pro Se Defendant.

The decision in Faretta v. California, 422 U.S. 806 (1975), held that counsel may be appointed over the defendant's objection, to assist and consult if requested to do so by the defendant. Rule 5.04 establishes standards for appointing advisory counsel in cases where the defendant waives counsel and the court believes it is appropriate to appoint advisory counsel.

In most cases, the primary role of counsel appointed over the defendant's objection will be advisory. In fewer cases, the role of appointed counsel may be to take over representation of the defendant during trial. The term "standby counsel" is too broad a term to cover the role of appointed counsel in every case or even most cases where counsel is appointed over the objection of the defendant. Because the primary purpose of counsel appointed over the objection of the defendant is to help the accused understand and negotiate through the basic procedures of the trial and "to relieve the trial judge of the need to explain and enforce basic rules of [the] courtroom," counsel appointed over the objection of the accused may be more properly called "advisory counsel."

Two main reasons exist for appointing advisory counsel for defendants who wish to represent themselves: (1) the fairness of a criminal process where lay people choose to represent themselves--to aid the court in fulfilling its responsibility for insuring a fair trial, to further the public interest in an orderly, rational trial, or if the court appoints advisory counsel to assist the pro se defendant--and (2) the disruption of the criminal process before its completion caused by the removal of an unruly defendant or a request for counsel during a long or complicated trial.

These general reasons for the appointment of counsel to the pro se defendant suggest a natural expectation of the level of readiness of advisory counsel. If the court appoints advisory counsel as a safeguard to the fairness of the proceeding, it would not be expected that counsel would be asked to take over the representation of the defendant during the trial and counsel should not be expected and need not be prepared to take over representation should this be requested or become necessary. If this unexpected event occurred and a short recess of the proceeding would be sufficient to allow counsel to take over representation, the court could enter that order. If the circumstances constituted a manifest injustice to continue with the trial, a mistrial could be granted and a date for a new trial, allowing counsel time to prepare, could be set. The court could also deny the request to allow counsel to take over representation if the circumstances would not make this feasible or practical.

If the court appoints advisory counsel because of the complexity of the case or the length of the trial or the possibility that the defendant may be removed from the trial because of disruptive behavior, advisory counsel must be expected to be prepared to take over as counsel in the middle of the trial so long as the interests of justice are served.

Whenever counsel is appointed over the defendant's objection, counsel's participation must not be allowed to destroy the jury's perception that the accused is representing himself or herself. In all proceedings, especially those before the jury, advisory counsel must respect the defendant's right to control the case and not interfere with it. The accused must authorize appointed counsel before the counsel can be involved, render impromptu advice, or ever appear before the court. If the accused does not wish appointed counsel to participate, counsel must simply attend the trial.

Even where appointed counsel is not expected to be ready to take over representation in the middle of the proceedings, it is appropriate and necessary that all advisory counsel be served with the same disclosure and discovery items as counsel of record so that counsel can at least be familiar with this information in acting in an advisory role. All counsel appointed for the pro se defendant must be served with the pleadings, motions, and discovery.

It is essential that at the outset the trial court explain to the accused and counsel appointed in these situations what choices the accused has and what the consequences of those choices may be later in the proceedings. In State v. Richards, 552 N.W.2d 197, 206 (Minn. 1996), the Supreme Court repeated the rule it set in State v. Richards, 463 N.W.2d 499 (Minn. 1990): the defendant's request for the "substitution of standby counsel [shall not be granted] unless, in the trial court's discretion, his request is timely and reasonable and reflects extraordinary circumstances." Trial courts should consider the progress of the trial, the readiness of standby counsel, and the possible disruption of the proceedings. Statement of the expectations of advisory counsel at the outset should make it clear to all concerned about what will happen should there be a change in the representation of the defendant during the proceeding.

A defendant appearing pro se with advisory counsel should be informed that the duties and costs of investigation, legal research, and other matters associated with litigating a criminal matter are the responsibility of the defendant and not advisory counsel. It should be made clear to the pro se defendant that advisory counsel is not a functionary of the defendant who can be directed to perform tasks by the defendant. A motion under Minn. Stat. § 611.21 is available to seek funds for hiring investigators and expert witnesses.

In certain circumstances, a separate appearance to fulfill the requirements of Rule 8 may serve very little purpose. Originally these rules required the appearance under Rule 5 to be in the county court and the appearance under Rule 8 to be in the district court. Now, both appearances are held in the district court. The additional time and judicial resources invested in a separate appearance under Rule 8 may yield little or no benefit. Therefore, Rule 5.05 permits the appearances required by Rule 5 and Rule 8 to be consolidated upon request of the defendant.

When the appearances are consolidated under Rule 5.05, all of the provisions in Rule 8 are applied to the consolidated hearing. This means that under Rule 8.04 the Omnibus Hearing provided for by Rule 11 must be scheduled for a date no later than 28 days after the consolidated hearing. This requirement is subject, however, to the power of the court under Rule 8.04(c) to extend the time for good cause related to the particular case upon motion of the defendant or the prosecution or upon the court's initiative. Also, the notice of evidence and identification procedures required by Rule 7.01 must be given at or before the consolidated hearing.

Under Rule 5.06, subd. 4 if the defendant pleads not guilty in a misdemeanor case and the prosecution has given the notice of evidence and identification prescribed by Rule 7.01, then both the defendant and the prosecution shall either waive or demand a Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) hearing. The waiver or demand is necessary only in cases where a jury trial is to be held since the notice is not required under Rule 7.01 if no jury trial is to be held

in a misdemeanor case.

Rule 6. Pretrial Release

Rule 6.01 Release on Citation

Subd. 1. Mandatory Citation Issuance in Misdemeanor Cases.

(a) By Arresting Officer. In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:

(1) the person must be detained to prevent bodily injury to that person or another;
(2) further criminal conduct will occur; or
(3) a substantial likelihood exists that the person will not respond to a citation.

If the officer has already arrested the person, a citation must issue in lieu of continued detention, and the person must be released, unless any of the circumstances in subd. 1(a)(1)-(3) above exist.

(b) At Place of Detention. When an officer brings a person arrested without a warrant for a misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff must issue a citation in lieu of continued detention unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist.

(c) Offenses Not Punishable by Incarceration. A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention.

(d) Reporting Requirements. If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.

Subd. 2. Permissive Authority to Issue Citations in Gross Misdemeanor and Felony Cases at Place of Detention.

When an officer brings a person arrested without a warrant for a felony or gross misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff may issue a citation and release the defendant unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist.

Subd. 3. Mandatory Release on Citation When Ordered by Prosecutor or Court.

In felony, gross misdemeanor, and misdemeanor cases, a person arrested without a warrant must be issued a citation and released if so ordered by the prosecutor or by the district court, or by any person designated by the court to perform that function.

Subd. 4. Form of Citation. The citation must direct the defendant to appear at a designated time and place.

In any county with a violations bureau, the citation may direct the defendant to appear at that bureau or direct the defendant to contact the bureau to schedule an appearance.

The citation must state that failure to appear or contact the violations bureau as directed may result in the issuance of a warrant. A summons or warrant issued after failure to respond to a citation may be based on sworn facts establishing probable cause contained in or with the citation and attached to the complaint.

Subd. 5. Lawful Searches. The issuance of a citation does not affect an officer's authority to conduct an otherwise lawful search.

Subd. 6. Persons in Need of Care. Even if a citation has been issued, an officer can take the person cited to an appropriate medical or mental health facility if that person appears mentally or physically incapable of self care.

Rule 6.02 Release by Court or Prosecutor

Subd. 1. Conditions of Release. A person charged with an offense must be released without bail when ordered by the prosecutor, court, or any person designated by the court to perform that function. On appearance before the court, a person must be released on personal recognizance or an unsecured appearance bond unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance. When this determination is made, the court must, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release that will reasonably assure the person's appearance as ordered, or, if no single condition gives that assurance, any combination of the following conditions:

(a) Place the defendant under the supervision of a person who, or organization that, agrees to supervise;
(b) Place restrictions on travel, association, or residence during release;
(c) Require an appearance bond, cash deposit, or other security; or
(d) Impose other conditions necessary to assure appearance as ordered.

If the court sets conditions of release, it must issue a written order containing them. A copy of the order must be provided to the defendant and to the law enforcement agency that has or had custody. The law enforcement agency must also be provided with the victim's name and location.

The court must set money bail without other conditions on which the defendant may be released by posting cash or sureties.

The defendant's release must be conditioned on appearance at all future court proceedings.

Subd. 2. Release Conditions. In determining conditions of release the court must consider:

(a) the nature and circumstances of the offense charged;
(b) the weight of the evidence;
(c) family ties;
(d) employment;
(e) financial resources;
(f) character and mental condition;
(g) length of residence in the community;
(h) criminal convictions;
(i) prior history of appearing in court;
(j) prior flight to avoid prosecution;
(k) the victim's safety;

(l) any other person's safety;
(m) the community's safety.

Subd. 3. Pre-Release Investigation. To determine conditions of release, the court may investigate the defendant's background before or at the defendant's court appearance. The investigation may be conducted by probation services or by any other qualified agency as directed by the court.

Information obtained in the pre-release investigation from the defendant in response to an inquiry during the investigation and any derivative evidence must not be used against the defendant at trial. Evidence obtained by independent investigation may be used.

Subd. 4. Review of Release Conditions. The court must review conditions of release on request of any party.

Rule 6.03. Violation of Release Conditions

Subd. 1. Authority to Apply for a Summons or Warrant. On application by the prosecutor, court services, or probation officer alleging probable cause that defendant violated a release condition, the court may issue a summons or warrant, using the procedure in paragraphs (a) and (b).

(a) Summons. A summons must be issued instead of a warrant unless a warrant is authorized under paragraph (b). The summons must direct the defendant to appear in court and include a date and time for a hearing.

(b) Warrant. The court may issue a warrant instead of a summons if a substantial likelihood exists that the defendant will fail to respond to a summons, that continued release of the defendant will endanger any person, or the defendant's location is not known. The warrant must direct the defendant's arrest and prompt appearance in court.

Subd. 2. Arrest Without Warrant. A peace officer may arrest a released defendant if the officer has probable cause to believe a release condition has been violated and it reasonably appears continued release will endanger the safety of any person. The officer must promptly take the defendant before a judge. When possible, a warrant should be obtained before making an arrest under this rule.

Subd. 3. Hearing. The defendant is entitled to a hearing on alleged violations of release conditions. If the court finds a violation, the court may revise the conditions of release as provided in Rule 6.02, subd. 1.

Subd. 4. Commission of Crime. When a complaint is filed or indictment returned charging a defendant with committing a crime while released pending adjudication of a prior charge, the court with jurisdiction over the prior charge may, after notice and hearing, review and revise the conditions of release as provided for in Rule 6.02, subd. 1.

Rule 6.04 Forfeiture

Forfeiture of an appearance bond must be as provided by law.

Rule 6.05 Detention Supervision

The court must supervise a defendant's detention to eliminate all unnecessary detention. A detention facility must make at least bi-weekly reports to the prosecutor and the court listing prisoners in custody

for more than 10 days in felony and gross misdemeanor cases, and prisoners in custody more than 2 days in misdemeanor cases.

Rule 6.06 Misdemeanor Trial Dates

A defendant must be tried promptly after entering a not guilty plea. If a defendant or the prosecutor demands a speedy trial in writing or on the record, the trial must begin within 60 days.

The 60-day period begins to run on the day of the not guilty plea, and may be extended for good cause shown on motion of the prosecutor or the defendant, or on the court's initiative. If an in-custody defendant's trial does not begin in 10 days, the defendant must be released subject to nonmonetary release conditions as set by the court under Rule 6.02, subd. 1.

Comment—Rule 6

In misdemeanor cases a citation must be issued if the misdemeanor charged is not punishable by incarceration. A person should not be taken into custody for an offense that cannot be punished by incarceration. Rule 1.04(a) defines misdemeanors.

The uniform traffic ticket may be used to issue a citation under Rule 6.01. Minn. Stat. § 169.99.

The arresting officer is to decide whether to issue a citation using the information available at the time. If that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make a determination from all the information then available, including any additional information disclosed by further interrogation and investigation.

Rule 6.01, subd. 6 is intended merely to stress that issuing a citation in lieu of a custodial arrest or continued detention does not affect a law enforcement officer's statutory right to transport a person in need of care to an appropriate medical facility. A law enforcement officer's power to transport a person for such purposes is still governed by statute and is neither expanded nor contracted by Rule 6.01, subd. 6. See, e.g., Minn. Stat. § 609.06, subd. 1(9) about the right to use reasonable force, in certain situations, toward mentally ill or mentally defective persons and Minn. Stat. § 253B.05, subd. 2 governing the right of a health or peace officer to transport mentally ill or intoxicated persons to various places for care.

These rules do not prescribe the consequences of failing to obey a citation. The remedy available is the issuance of a warrant or summons upon a complaint.

Rule 6.02, subd. 1 specifies the conditions of release that can be imposed on a defendant at the first appearance. If conditions of release are endorsed on the warrant (Rule 3.02, subd. 1), the defendant must be released on meeting those conditions.

Release on "personal recognizance" is a release without bail on defendant's promise to appear at appropriate times. An "Order to Appear" is an order issued by the court releasing the defendant from custody or continuing the defendant at large pending disposition of the case, but requiring the defendant to appear in court or in some other place at all appropriate times.

The conditions of release must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should only be required when no other conditions will reasonably ensure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance.

Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985) provide for release upon posting of 10 percent of the face value of an unsecured bond and upon posting of a secured bond by an uncompensated surety. Although Rule 6.02 does not expressly authorize these options, the rule is broad enough to permit the court to set such conditions of release in an unusual case. If the 10 percent cash option is authorized by the district court, it should be in lieu of, not in addition to, an unsecured bond, because there is generally no reasonable expectation of collecting on the unsecured bond and the public should not be deluded into thinking it will be collected. The court should consider the availability of a reliable person to help assure the defendant's appearance. If cash bail is deposited with the court it is deemed the property of the defendant under Minn. Stat. § 629.53 and according to that statute the court can apply the deposit to any fine or restitution imposed.

For certain driving while intoxicated prosecutions under Minn. Stat. § 169A.20, if the defendant has prior convictions under that or related statutes, the court may impose the conditions of release set forth in Minn. Stat. § 169A.44. Conditions may include alcohol testing and license plate impoundment. However, Rule 6.02, subd. 1 requires that the court must set the amount of money bail without any other conditions on which the defendant can obtain release. The Advisory Committee was of the opinion that this is required by the defendant's constitutional right to bail. Minn. Const. Art. 1, § 7 makes all persons bailable by sufficient sureties for all offenses. It would violate this constitutional provision for the court to require that the monetary bail could be satisfied only by a cash deposit. The defendant must also be given the option of satisfying the monetary bail by sufficient sureties. State v. Brooks, 604 N.W.2d 345 (Minn. 2000).

If the court sets conditions of release, aside from an appearance bond, then the court must issue a written order stating those conditions. Any written order must be issued promptly and the defendant's release must not be delayed. In addition to providing a copy of the order to the defendant, the court must immediately provide it to the law enforcement agency that has or had custody of the defendant along with information about the named victim's whereabouts. This provision for a written order is in accord with Minn. Stat. § 629.715 which concerns conditions of release for defendants charged with crimes against persons. Written orders are required because it is important that the defendant, concerned persons, and law enforcement officers know precisely the conditions that govern the defendant's release.

When setting bail or other conditions of release, see Minn. Stat. § 629.72, subd. 7 and Minn. Stat. § 629.725 as to the court's duty to provide notice of a hearing on the defendant's release from pretrial detention in domestic abuse, harassment or crimes of violence cases. Also see Minn. Stat. § 629.72, subd. 6 and Minn. Stat. § 629.73 as to the duty of the law enforcement agency having custody of the defendant in such cases to provide notice of the defendant's impending release.

When imposing release conditions under Rule 6.02, subd. 2, Recommendation 5, concerning sexual assault, in the Final Report of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts, 15 Wm.Mitchell L.Rev. 827 (1989), states that "Minnesota judges should not distinguish in setting bail, conditions of release, or sentencing in non-familial criminal sexual conduct cases on the basis of whether the victim and defendant were acquainted." This prohibition should be applied in setting bail in other cases as well.

NOTE: Rule 6 does not cover appeal of the release decision nor does it include release after a conviction. Appeal of the release decision is permitted under Rules 28 and 29. These rules also set standards and procedures for releasing a defendant after conviction.

Rule 6.03 prescribes the procedures followed when conditions of release are violated. The Rule

requires issuing a summons rather than a warrant under circumstances similar to those required under Rule 3.01. Rule 6.03, subd. 3, requires only an informal hearing and does not require a showing of willful default, but leaves it to the court's discretion to determine under all of the circumstances whether to continue or revise the possible release conditions. On finding a violation, the court is not authorized to revoke the defendant's release without setting bail because such action is not permitted under Minn. Const. art. 1, § 5. The court must continue or revise the release conditions, governed by the considerations set forth in Rule 6.02, subds. 1 and 2. Under those rules, the court may increase the defendant's bail. If the defendant is unable to post the increased bail or to meet alternative conditions of release, the defendant may be kept in custody.

There are no provisions similar to Rule 6.03 in existing Minnesota statutory law except Minn. Stat. § 629.58, which provides that if a defendant fails to perform the conditions of a recognizance, process must be issued against the persons so bound. Rule 6.03, subds. 1 and 2 take the place of that statute.

Minn. Stat. § 629.63 providing for surrender of the defendant by the surety on the defendant's bond is not affected by Rule 6.03. To the extent that it is inconsistent with Rule 6.03 and Rule 6.02, subds. 1 and 2, however, Minn. Stat. § 629.64, requiring that in the event a defendant is surrendered by such surety money bail must be set, is superseded.

As to sanctions for violating Rule 6.06 speedy trial provisions, see State v. Kasper, 411 N.W.2d 182 (Minn.1987) and State v. Friberg, 435 N.W.2d 509 (Minn.1989). As to the right to a speedy trial generally, see the comments to Rule 11.09.

Rule 7. NOTICE BY PROSECUTOR OF OMNIBUS ISSUES, OTHER OFFENSES EVIDENCE, AND INTENT TO SEEK AGGRAVATED SENTENCE

Rule 7.01 Notice of Omnibus Issues

In any case where a right to a jury trial exists, the prosecutor must notify the defendant or defense counsel of:

(1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping;
(2) any confessions, admissions, or statements in the nature of confessions made by the defendant;
(3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or
(4) any evidence of lineups, show-ups, or other procedures used to identify the defendant or any other person.

In felony and gross misdemeanor cases, this notice must be given in writing on or before the date set for the defendant's initial appearance in the district court under Rule 5.05.

In misdemeanor cases, this notice must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or 7 days before trial if no pretrial conference is held.

This written notice may be served:
(1) personally on the defendant or defense counsel;
(2) by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there; or

(3) by ordinary mail sent to defense counsel's business address or left at this address with a person of suitable age and discretion working there.

Rule 7.02 Notice of Other Offenses

The prosecutor must notify the defendant or defense counsel in writing of any additional offenses that may be offered at the trial under any exceptions to the general exclusionary rule.

In felony and gross misdemeanor cases, the notice must be given at or before the Omnibus Hearing under Rule 11, or as soon after that hearing as the offenses become known to the prosecutor.

In misdemeanor cases, the notice must be given at or before a pretrial conference under Rule 12, if held, or as soon after the hearing as the offenses become known to the prosecutor. If no pretrial conference is held, the notice must be given at least 7 days before trial or as soon as the prosecutor learns of the other offenses.

The additional offenses must be described with sufficient particularity to enable the defendant to prepare for trial. No notice is required for offenses already prosecuted, offenses offered to rebut the defendant's character evidence, or offenses arising out of the same occurrence or episode as the charged offense.

Rule 7.03 Notice of Intent to Seek an Aggravated Sentence

The prosecutor must give written notice at least 7 days before the Omnibus Hearing of intent to seek an aggravated sentence. Notice may be given later if permitted by the court on good cause and on conditions that will not unfairly prejudice the defendant. The notice must include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence.

Rule 7.04 Completion of Discovery

Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecutor and defendant must complete the discovery that is required by Rules 9.01 and 9.02 to be made without the necessity of an order of the court. Rule 9.04 governs completion of discovery for misdemeanor cases.

Comment—Rule 7

Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 553-54, 141 N.W.2d 3, 13 (1965)) of evidence obtained from the defendant and of identification procedures must be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after the first appearance in the court under Rule 5) so that the defendant may determine at the time of the Rule 8 appearance whether to waive or demand a Rasmussen hearing (Rule 8.03). If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) no more than 28 days later. It is permissible for the prosecutor to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.

In misdemeanor cases under Rule 7.01, the Rasmussen notice of evidence obtained from the defendant and of identification procedures may be given at arraignment, and in such a case the waiver or demand of a hearing takes place at that time (Rule 5.06, subd. 4). However, since misdemeanor arraignments are often within one day or even a few hours of an arrest, a prosecutor may not have sufficient knowledge of the case to issue a Rasmussen notice at that time. Rather than discourage such prompt arraignments, this rule provides that the Rasmussen notice may be served as late as the pretrial

conference, if held, or at least seven days before trial if no pretrial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held. Even where no notice is required, the discovery permitted by Rule 9.04 will give the defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.

If the notice required by Rule 7.01 is not actually received, the court may grant a continuance to prevent any prejudice due to surprise.

Rule 7.02 requires that the Spreigl notice be given on or before the date of the Omnibus Hearing (Rule 11) in order that any issues that may arise as to the admissibility of the evidence of these offenses at trial may be ascertained and determined at the Omnibus Hearing. If the prosecutor learns of any such offenses after the Omnibus Hearing, the prosecutor must immediately give notice to the defendant.

Rule 7.03 establishes the notice requirements for a prosecutor to initiate proceedings seeking an aggravated sentence in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 (2004). See Rule 1.04(d) as to the definition of "aggravated sentence." See also the comments to that rule. The written notice required by Rule 7.03 must include not only the grounds or statute relied upon, but also a summary statement of the supporting factual basis. However, there is no requirement that the factual basis be given under oath. This rule balances the competing interests of the parties: the prosecution may not have sufficient evidence at charging to make the Blakely decision and the defense requires notice as early as possible to prepare an adequate defense. The rule recognizes that it may not always be possible to give notice by 7 days before the Omnibus Hearing and the court may permit a later notice for good cause so long as the later notice will not unfairly prejudice the defendant. In making that decision the court can consider whether a continuance of the proceedings or other conditions would cure any unfair prejudice to the defendant. Pretrial issues concerning a requested aggravated sentence will be considered and decided under the Omnibus Hearing provisions of Rule 11.

Rule 7.04 provides that discovery required under Rule 9 in felony and gross misdemeanor cases must be completed by the prosecution and defense before the Omnibus Hearing (Rule 11). This will permit the court to resolve any issues that may have arisen between the parties with respect to discovery (Rules 9.03, subd. 8) at the Omnibus Hearing. It may also result in a plea of guilty at the Omnibus Hearing (Rule 11.08). All notices under Rule 7 must also be filed with the court (Rule 33.04). The discovery requirements for misdemeanor cases are set forth in Rule 9.04.

Rule 8. Procedure on Second Appearance in Felony and Gross Misdemeanor Cases

Rule 8.01. Purpose of Second Appearance

(a) The purpose of this hearing is to again advise defendants of their rights, to allow defendants to plead guilty, or if the defendant does not plead guilty, to request or waive an Omnibus Hearing under Rule 11.

(b) At this hearing, the court must again inform the defendant of the:

(1) charge(s);
(2) defendant's rights, including the right to counsel, and to have counsel appointed under Rule 5.04 if eligible, and;
(3) opportunity to enter a guilty plea as permitted by Rule 8.02.

(c) The court must ensure the defendant has a copy of the complaint or indictment.

(d) The court may continue or modify the defendant's bail or other conditions of release previously ordered.

Rule 8.02 Arraignment

Subd. 1. Entry of Plea. The arraignment must be conducted in open court. Except as provided in subdivision 2, the court must ask the defendant to enter a plea. The only plea a defendant may enter at the Rule 8 hearing is a guilty plea.

If the defendant pleads guilty, the pre-sentencing and sentencing procedures in these rules must be followed.

If the defendant does not wish to plead guilty, the arraignment must be continued until the Omnibus Hearing.

Subd. 2. Homicide or Offenses Punishable by Life Imprisonment. If the complaint charges a homicide, and the prosecuting attorney notifies the court that the case will be presented to the grand jury, or if the offense is punishable by life imprisonment, the defendant cannot enter a plea at the Rule 8 hearing.

Presentation of the case to the grand jury must commence within 14 days from the date of defendant's appearance in the court under this rule, and an indictment or report of no indictment must be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 must be held as provided by Rule 19.04, subd. 5.

Rule 8.03 Demand or Waiver of Hearing

If the defendant does not plead guilty, the defendant and the prosecutor must each either waive or demand a hearing as provided in Rule 11.02 on the admissibility at trial of evidence specified in the prosecutor's Rule 7.01 notice, or on the admissibility of any evidence obtained as a result of the specified evidence.

Rule 8.04 Plea and Time of Omnibus Hearing

(a) If the defendant does not plead guilty, the Omnibus Hearing on the issues as provided for in Rules 11.03 and 11.04 must be held within the time specified in this rule.

(b) If a hearing on either of the issues set forth in Rule 8.03 is demanded, the Omnibus Hearing must also include the issues provided for in Rule 11.02.

(c) The Omnibus Hearing provided for in Rule 11 must be scheduled for a date not later than 28 days after the defendant's appearance before the court under this rule. The court may extend the time for good cause related to the particular case on motion of the prosecutor or defendant or on the court's initiative.

Rule 8.05 Record

A verbatim record must be made of the proceedings under this rule.

Comment—Rule 8

If the Rasmussen hearing is waived under Rule 8.03 by both the prosecution and the defense, the Omnibus Hearing provided by Rule 11 must be held without a Rasmussen hearing.

If the Rasmussen hearing is demanded, the hearing must be held as part of the Omnibus Hearing as provided by Rule 11.02.

The Omnibus Hearing must be commenced not later than 28 days after the defendant's initial appearance in court under Rule 8 unless the time is extended for good cause related to the particular case. See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.

Rule 9. Discovery in Felony, Gross Misdemeanor, and Misdemeanor Cases

Rule 9.01 Prosecution Disclosure in Felony and Gross Misdemeanor Cases

Subd. 1. Prosecution Disclosure Without Court Order. The prosecutor must, at the defense's request and before the Rule 11 Omnibus Hearing, allow access at any reasonable time to all matters within the prosecutor's possession or control that relate to the case, except as provided in Rule 9.01, subd. 3, and make the following disclosures:

(1) Trial Witnesses; Other Persons; Grand Jury Witnesses.

(a) Trial Witnesses. The names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within the prosecutor's actual knowledge. The defense must not make any comment in the jury's presence that a name is on a witness list furnished by the prosecutor.

(b) Other Persons. The names and addresses of anyone else with information relating to the case.

(c) Grand Jury Witnesses. If the defendant has been charged by indictment, the names and addresses of the grand jury witnesses.

(2) Statements. Any of the following known to the prosecutor that relate to the case:

(a) written or recorded statements;
(b) written summaries of oral statements;
(c) the substance of oral statements.

The obligation to disclose the preceding types of statements applies whether or not the person who made the statement is listed as a witness.

(3) Documents and Tangible Objects. Any of the following that relate to the case:

(a) books, papers, documents;
(b) photographs;
(c) law enforcement officer reports;
(d) tangible objects;
(e) the location of buildings and places;
(f) grand jury transcripts;

(g) reports on prospective jurors.

(4) Reports of Examinations and Tests.

(a) The results or reports of physical or mental examinations, scientific tests, experiments, or comparisons made that relate to the case.

(b) In addition, the prosecutor must allow the defendant to conduct reasonable tests. If a test or experiment, other than those conducted under Minn. Stat. ch. 169A, might preclude any further tests or experiments, the prosecutor must give reasonable notice and opportunity to the defense so that a qualified expert may observe the test or experiment.

(c) A person who will testify as an expert but who created no results or reports in connection with the case must provide to the prosecutor for disclosure to the defense a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.

(5) Criminal Records of Defendant and Defense Witnesses. The conviction records of the defendant and of any defense witnesses disclosed under Rule 9.02, subd. 1(3) and (8) that are known to the prosecutor, provided the defense informs the prosecutor of any of these records known to the defendant.

(6) Exculpatory Information. Material or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt.

(7) Evidence Relating to Aggravated Sentence. Evidence the prosecutor may rely on in seeking an aggravated sentence.

Subd. 1a. Scope of Prosecutor's Obligations; Inspection, Reproduction, and Documentation.

(1) Scope of Prosecutor's Obligations. The prosecutor's obligations under this rule extend to material and information in the possession or control of members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office.

(2) Inspection, Reproduction, and Documentation. The prosecutor must allow the defendant to inspect and reproduce any information required to be disclosed under this rule, as well as to inspect and photograph any object, place, or building required to be disclosed under this rule.

Subd. 2. Discretionary Disclosure By Court Order.

(1) Matters Possessed by Other Governmental Agencies. On the defendant's motion, the court for good cause must require the prosecutor, except as provided by Rule 9.01, subd. 3, to assist the defendant in seeking access to specified matters relating to the case that are within the possession or control of an official or employee of any governmental agency, but not within the prosecutor's control.

The prosecutor must use diligent good faith efforts to cause the official or employee to allow the defense reasonable access to inspect, photograph, copy, or have reasonable tests made.

(2) Nontestimonial Evidence from Defendant on Defendant's Motion. On the defendant's motion, the court for good cause may require the prosecutor to permit the defendant to participate in a lineup, to speak for identification by witnesses, or to participate in other procedures.

(3) Other Relevant Material. On the defendant's motion, the trial court at any time before trial may, in its discretion, require the prosecutor to disclose to defense counsel and to permit the inspection, reproduction, or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant must inspect and preserve any relevant material and information.

Subd. 3. Non-Discoverable Information. The following information is not discoverable by the defendant:

(1) Work Product.

(a) Opinions, Theories, or Conclusions. Unless otherwise provided by these rules, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the prosecutor, the prosecutor's staff or officials, or official agencies participating in the prosecution.

(b) Reports. Except as provided in Rule 9.01, subd. 1(1) to (7), reports, memoranda, or internal documents made by the prosecutor or members of the prosecutor's staff, or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

(2) Prosecution Witnesses Under Prosecutor's Certificate. The information concerning the witnesses and other persons described in Rule 9.01, subd. 1(1) and (2) is not subject to disclosure if the prosecutor files a written certificate with the trial court that to do so may endanger the integrity of a continuing investigation or subject witnesses or other persons to physical harm or coercion. Non-disclosure under this rule must not extend beyond the time the witnesses or persons are sworn to testify at the trial.

Rule 9.02 Defendant's Disclosure in Felony and Gross Misdemeanor Cases

Subd. 1. Information Subject to Discovery Without Court Order. The defendant must, at the prosecutor's request and before the Rule 11 Omnibus Hearing, make the following disclosures and permit the prosecutor to inspect and reproduce them:

(1) Documents and Tangible Objects. Any of the following the defense intends to introduce at trial:

(a) books, papers, documents;
(b) photographs;
(c) tangible objects;
(d) the locations of buildings and places concerning which the defendant intends to offer evidence. As to this disclosure, the defense must also permit photographing;
(e) without regard to use at trial, any reports on prospective jurors.

(2) Reports of Examinations and Tests.

(a) Any of the following results or reports the defense intends to introduce at trial that were made in connection with the case and are within the defense's possession or control, or were prepared by a witness the defense intends to call at trial, when the results and reports are of:

(i) physical or mental examinations;
(ii) scientific tests, experiments, or comparisons.

(b) In addition, a person who will testify as an expert but who created no results or reports in connection with the case must provide to the defense for disclosure to the prosecutor a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.

(3) Notice of Defense Witnesses. The defendant must disclose the names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within the defendant's actual knowledge.

The prosecutor must not make any comment in the jury's presence that a name is on a witness list furnished by the defendant.

(4) Statements of Defense and Prosecution Witnesses. The defendant must disclose:

(a) Relevant written or recorded statements of the persons the defendant intends to call at trial;

(b) Statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense within the defendant's possession or control;

(c) Written summaries known to the defense of the substance of any oral statements made by prosecution witnesses to defense counsel or persons participating in the defense, or obtained by the defendant at the defense counsel's direction.

(d) The substance of any oral statements that relate to the case made by persons the defendant intends to call as witnesses at trial, and that were made to defense counsel or persons participating in the defense.

(e) The defendant is not required to disclose statements made by the defendant to defense counsel or agents of defense counsel that are protected by the attorney-client privilege or by state or federal constitutional guarantees.

(5) Notice of defense.

The defense must inform the prosecutor in writing of any defense, other than not guilty, that the defendant intends to assert, including but not limited to:

(a) self-defense;
(b) entrapment;
(c) mental illness or deficiency;
(d) duress;
(e) alibi;
(f) double jeopardy;
(g) statute of limitations;
(h) collateral estoppel;
(i) defense under Minn. Stat. § 609.035;
(j) intoxication.

A defendant who gives notice of intent to assert the defense of mental illness or mental deficiency must also notify the prosecutor of any intent to also assert the defense of not guilty.

(6) Entrapment.

(a) If the defendant intends to offer evidence of entrapment, the defendant must inform the prosecutor of the facts supporting the defense, and elect to submit the defense to the court or jury.

(b) The entrapment defense may be submitted to the court only if the defendant waives a jury trial on that issue as provided in Rule 26.01, subd. 1(2).

(c) If the defendant submits entrapment to the court, the hearing on entrapment must be included in the Omnibus Hearing under Rule 11 or in the evidentiary hearing under Rule 12. The court must make findings of fact and conclusions of law on the record supporting its decision.

(7) Alibi. If the defendant intends to offer evidence of an alibi, the defendant must inform the prosecutor of:

(a) the specific place or places where the defendant was when the alleged offense occurred;
(b) the names and addresses of the witnesses the defendant intends to call at the trial in support of the alibi.

As soon as practicable, the prosecutor must then inform the defendant of the names and addresses of the witnesses the prosecutor intends to call at trial to rebut the testimony of any of the defendant's alibi witnesses.

(8) Criminal Record. The defendant must inform the prosecutor of any convictions the defendant has, provided the prosecutor informs the defense of the defendant's record of convictions known to the prosecutor.

Subd. 2. Discovery by Court Order.

(1) Disclosures Permitted. On the prosecutor's motion, with notice to the defense and a showing that one or more of the discovery procedures described below will materially aid in determining whether the defendant committed the offense charged, the court before trial may, subject to constitutional limitations, order a defendant to:

(a) Appear in a lineup;
(b) Speak for the purpose of voice identification or for taking voice prints;
(c) Permit finger, palm, or foot-printing;
(d) Permit body measurements;
(e) Pose for photographs not involving re-enactment of a scene;
(f) Permit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion, but the court must not permit a blood sample to be taken except on a showing of probable cause to believe that the test will aid in establishing the defendant's guilt;
(g) Provide specimens of the defendant's handwriting; and
(h) Submit to reasonable physical or medical inspection.

(2) Notice of Time and Place of Disclosures. The prosecutor must give the defense reasonable notice of the time and place the defendant must appear for any discovery purpose listed above.

(3) Medical Supervision. Blood tests must be conducted under medical supervision. The court may require medical supervision for any other test ordered under this rule. On the defendant's motion, the court may delay the defendant's appearance for a reasonable time, or may order that it take place at the defendant's residence, or some other convenient place.

(4) Notice of Results of Disclosure. The prosecutor must tell the defense the results of the procedures within 5 days of learning the result, unless the court orders otherwise.

(5) Other Methods Not Excluded. The discovery procedures provided in this rule do not exclude other lawful methods available for obtaining the evidence discoverable under this rule.

Subd. 3. Information Not Subject to Disclosure by Defendant; Work Product. Unless these rules direct otherwise, legal research, records, correspondence, reports, or memoranda, to the extent they contain the opinions, theories, or conclusions of the defendant or defense counsel or persons participating in the defense, are not subject to disclosure.

Rule 9.03 Regulation of Discovery

Subd. 1. Investigations Not to be Impeded. Counsel for the parties and other prosecution or defense personnel must not tell anyone with relevant information (except the accused) not to discuss the case with opposing counsel, or not to show opposing counsel relevant material, or otherwise impede opposing counsel's investigation of the case.

This rule does not apply to matters not subject to discovery under this rule or that are covered by a protective order.

Subd. 2. Timely Disclosure and Continuing Duty to Disclose.

(a) All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.

(b) If, after compliance with any discovery rules or orders, a party discovers additional material, information, or witnesses subject to disclosure, that party must promptly notify the other party of what it has discovered and disclose it.

(c) Each party has a continuing duty of disclosure before and during trial.

Subd. 3. Time, Place, and Manner of Discovery and Inspection. A court granting discovery must specify the time, place, and manner of discovery, and may impose reasonable terms and conditions.

Subd. 4. Custody of Materials. Materials furnished to a party under discovery rules or orders must remain in the party's custody and be used by the party only to conduct that attorney's side of the case, and may be subject to other conditions the court orders.

Subd. 5. Protective Orders. The court may order disclosures restricted, deferred, or made subject to other conditions.

Subd. 6. In Camera Proceedings. On any party's motion, with notice to the other parties, the court for good cause may order a discovery motion to be made in camera. A record must be made. If the court orders an in camera hearing, the entire record of the motion must be sealed and preserved in the court's records, and be available to reviewing courts.

Subd. 7. Excision. When parts of materials are discoverable under these rules and other parts are not, the discoverable portions must be disclosed. Material excised under judicial order must be sealed and be made available to reviewing courts.

Subd. 8. Sanctions. If a party fails to comply with a discovery rule or order, the court may, on notice and motion, order the party to permit the discovery, grant a continuance, or enter any order it deems just in the circumstances. Any person who willfully disobeys a court's discovery order may be held in contempt.

Subd. 9. Filing. Unless the court directs otherwise, discovery disclosures made under Rule 9 are not subject to the filing requirements in Rule 33.04. The party making disclosures must prepare an itemized descriptive list identifying the disclosures but without disclosing their contents, and must file the list as provided by Rule 33.04.

Subd. 10. Reproduction. When an obligation exists to permit reproduction of a report, statement, document, or other tangible thing discoverable under this rule, it may be satisfied by any method that provides an exact reproduction, including e-mail, facsimile, or similar method if available to both parties.

Rule 9.04 Discovery in Misdemeanor Cases

In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including e-mail, facsimile, or similar method if available to both parties.

9.05 Charges and Exemptions for Reproduction of Discovery in All Cases

A reasonable charge may be made to cover the actual costs of reproduction, but no charges may be assessed to a defendant who is:

(1) represented by the public defender or by an attorney working for a public defense corporation under Minn. Stat. § 611.216; or
(2) determined by the court under Rule 5.04 to be financially unable to obtain counsel.

Comment—Rule 9

Rule 9, with Rules 7.01, 19.04, subd. 6, and 18.04, subds. 1 and 2 (recorded testimony of grand jury witnesses), provide a comprehensive method of discovery of the prosecution (Rule 9.01) and defense (Rule 9.02) cases. The rules are intended to give the parties complete discovery subject to constitutional limitations.

The object of the rules is to complete discovery procedures so far as possible by the Omnibus Hearing under Rule 11, which will be held within 42 days after the defendant's first appearance in court following a complaint under Rule 5, where the Rule 5 and Rule 8 appearances are not consolidated, or within 7 days after the first appearance in district court following an indictment (Rule 19.04), and that all issues arising from the discovery process, including the need for additional discovery, will be resolved at the Omnibus Hearing (Rules 11.04; 9.01, subd. 2; 9.03, subd. 8).

Rule 9.01, subd. 1 provides generally for access by defense counsel to unprotected materials in the prosecution file, and also for numerous specific disclosures that must be made by the prosecutor on defense request. The general "open file" policy established by the rule is based on Unif.R.Crim.P. 421(a) (1987). Of course, this "open file" policy does not require the prosecuting attorney to give defense counsel access to any information that would be deemed non-discoverable under Rule 9.01, subd. 3.

Rule 9.01 does not require any specific form of request. It is anticipated that the discovery provided for by Rule 9.01, subd. 1, as well as the disclosures required of the defense by Rule 9.02 without order of court, will be accomplished informally between the prosecutor and defense counsel.

Rule 9.01, subd. 1(1)(a), forbidding comment to the jury on the fact that a person was named on the list of prosecution witnesses, is not intended to affect any right defense counsel may have under existing law to comment concerning the prosecution's failure to call a particular witness, but prevents defense counsel from commenting that the witness was on the prosecution's list.

Rule 9.01, subd. 1(3)(f) permits the defendant to obtain grand jury transcripts possessed by the prosecutor. If the defendant wants portions of the grand jury record not yet transcribed or possessed by the prosecutor, a request must be made under Rule 18.04.

Rule 9.01, subd. 1(4) permits discovery of reports of examinations and tests. If a test or experiment done by the prosecution does not destroy the evidence and preclude further tests or experiments, it is not necessary under this rule to notify the defendant or to allow a defense expert to observe the test or experiment.

Rule 9.01, subd. 1(5) provides for the reciprocal discovery of the criminal records of any defense witness disclosed to the prosecution under Rule 9.02, subd. 1(3). Under Rule 9.03, subd. 2, a continuing duty exists to disclose this information through trial. If the prosecutor intends to impeach the defendant or any defense witnesses with evidence of prior convictions the prosecutor is required by State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn.1980) to request a pretrial hearing on the admissibility of this evidence under the Rules of Evidence. The pretrial hearing may be made a part of the Omnibus Hearing under Rule 11 or the pretrial conference under Rule 12.

Rule 9.01, subd. 1(7) requires the prosecutor to disclose to the defendant or defense counsel all evidence not otherwise disclosed on which the prosecutor intends to rely in seeking an aggravated sentence under Blakely v. Washington, 542 U.S. 296 (2004).

The requirement under Rule 9.02, subd. 1(1)(e) to disclose reports on prospective jurors does not require disclosure of opinions or conclusions concerning jurors given by persons assisting counsel on the case. Such material would be protected as work product under Rule 9.02, subd. 3.

The provision in Rule 9.02 subd. 1(4)(d) that defense counsel and the defendant disclose the substance of any oral statements obtained from persons whom the defendant intends to call at the trial is not intended to support a claim that if counsel or the defendant interviewed the witness without a third party present that defense counsel can be disqualified in order to permit counsel to testify to any

discrepancy between the oral statement disclosed and the witness's trial testimony, or that if the defendant declines to testify to the discrepancy that the witness's testimony should be stricken. Other solutions should be sought, such as stipulating that in the interview that counsel or the defendant conducted, the witness made the statement the prosecutor now seeks to impeach.

Rule 9.02, subd. 1(5) requires written notice of any defense – other than not guilty – on which the defendant intends to rely at the trial, along with the names and addresses of the witnesses the defendant intends to call at the trial. The defendant is not required to indicate the witnesses intended to be used for each defense except for the defense of alibi (Rule 9.02, subd. 1(7)).

Rule 9.02, subd. 2 regulates orders for nontestimonial identification or other procedures. This rule applies after a defendant has been charged. Precharging nontestimonial procedures are usually accomplished by search warrant.

Following the charging of a felony or gross misdemeanor, the order may be obtained at the first appearance of the defendant under Rule 4.02, subd. 5(1), and Rule 5, or at or before the Omnibus Hearing under Rule 11. The order may be obtained from the district court at any time before trial, but preferably at or before the Omnibus Hearing.

In making protective orders under Rule 9.03, subd. 5 or in ruling on motions to compel discovery under Rules 9.01, subd. 2, and 9.03, subd. 8, the court may avail itself of Rule 9.03, subds. 6 and 7 authorizing in camera proceedings and excision.

Under Rule 9.04 the prosecutor should reveal not only the reports physically in the prosecutor's possession, but also those concerning the case that are in the possession of the police.

In those rare cases where additional discovery is considered necessary by either party, it shall be by consent of the parties or by motion to the court. In such cases it is expected that the parties and the court will be guided by the extensive discovery provisions of these rules. Rule 9 provides guidelines for deciding any such motions, but they are not mandatory and the decision is within the discretion of the district court judge. State v. Davis, 592 N.W.2d 457, 459 (Minn. 1999).

Under Rule 9.05, the provision of the rule permitting free copies to public defenders and attorneys working for a public defense corporation under Minn. Stat. § 611.216 is in accord with Minn. Stat. § 611.271.

Rule 10. Pleadings and Motions Before Trial; Defenses and Objections

Rule 10.01 Pleadings and Motions

Subd. 1. Pleadings. The pleadings consist of the indictment, complaint, or tab charge and any plea permitted by Rule 14.

Subd. 2. Motions; Waiver. Defenses, objections, issues, or requests that can be determined without trial on the merits must be made before trial by a motion to dismiss or to grant appropriate relief. The motion must include all defenses, objections, issues, and requests then available. Failure to include any of them in the motion constitutes waiver, but lack of jurisdiction over the offense or failure of the indictment or complaint to charge an offense can be noticed by the court at any time during the proceeding.

The court can grant relief from the waiver for good cause. The defendant does not waive any defenses or objections by including them in a motion with other defenses, objections, or issues.

Rule 10.02 Motions Attacking Court Jurisdiction in Misdemeanor Cases

A motion to dismiss for lack of personal jurisdiction in a misdemeanor case cannot be made until after the prosecutor files a complaint and the defendant pleads not guilty, unless the court hears and determines the motion summarily. Notice of the motion must be given orally on the record in court or in writing to the prosecutor. The notice must be given no later than 7 days after entry of the not guilty plea, or else the jurisdictional challenge is waived. The court for good cause can grant relief from the waiver.

Rule 10.03 Service of Motions; Hearing Date

Subd. 1. Service. In felony and gross misdemeanor cases, motions must be made in writing and served upon opposing counsel no later than 3 days before the Omnibus Hearing unless the court for good cause permits the motion to be made and served later.

In misdemeanor cases, except as permitted in subdivision 2, motions must be made in writing and served – along with any supporting affidavits – on opposing counsel at least 3 days before the hearing and no more than 30 days after the arraignment unless the court for good cause permits the motion to be made and served later.

Subd. 2. Hearing Date. In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it must be heard at that hearing and determined as provided in Rule 11.07.

In misdemeanor cases, if a pretrial conference is held, the motion must be heard then unless the court directs otherwise for the purpose of hearing witnesses, or for other good cause. If the motion is not heard at a pretrial conference, it must be heard before trial, unless the court – upon agreement by the prosecutor and defense attorney – hears and determines the motion at arraignment. If the court hears the motion at the arraignment, it need not be in writing, but a record must be made of the proceedings, and witnesses can be called in the court's discretion. The motion must be determined before trial as provided in Rule 12.07.

Subd. 3. Discovery. A party intending to call witnesses at a motion hearing must disclose them at least 3 days before the hearing and must comply with Rule 9 as if the witnesses were to be called at the trial.

Comment—Rule 10

Rule 10 does not require pre-trial motions to be made before a plea is entered.

As a general rule, under Rule 10.02 no challenge to the court's personal jurisdiction can be made in a misdemeanor case until after a complaint has been filed. Therefore, a defendant who has been tab charged must first demand a complaint under Rule 4.02, subd. 5(3) before raising the jurisdictional challenge. If no complaint is issued, the charge must be dismissed under Rule 4.02, subd. 5(3). If a complaint is issued, it will often make any possible challenge moot, since a valid complaint would give the court jurisdiction even if the arrest was illegal. See City of St. Paul v. Webb, 256 Minn. 210, 97 N.W.2d 638 (1959). Once the complaint is issued, the jurisdictional challenge becomes a sufficiency of the complaint question.

If the defendant's motion to dismiss is denied, Rule 17.06, subd. 4(1) provides that the defendant can continue to raise the jurisdictional issue on direct appeal if convicted after a trial. This procedure avoids the necessity of seeking review by an extraordinary writ that oftentimes would delay a trial otherwise

ready to proceed.

Rule 17.06, subd. 4 describes the effect of determining a motion to dismiss under this rule.

In misdemeanor cases, Rule 10.03, subd. 2 provides an alternative method to dispose of a motion to dismiss – including a motion to dismiss for want of personal jurisdiction – at the time of arraignment. When there is no dispute over the facts, and the law can be quickly and adequately argued, this alternative procedure can provide an immediate disposition and avoid the delay and expense of further court appearances.

RULE 11. THE OMNIBUS HEARING

Rule 11.01. Time and Place of Hearing

In felony and gross misdemeanor cases, if the defendant has not pled guilty, an Omnibus Hearing must be held.

(a) The Omnibus Hearing must start within 42 days of the Rule 5 appearance if it was not combined with the Rule 8 hearing, or within 28 days of the Rule 5 appearance if it was combined with the Rule 8 hearing.

(b) The Omnibus Hearing must be held in the district where the alleged offense occurred.

Rule 11.02. Scope of the Hearing

If the prosecutor or defendant demands a hearing under Rule 8.03, the court must conduct an Omnibus Hearing and hear all motions relating to:

(a) Probable cause;
(b) Evidentiary issues;
(c) Discovery;
(d) Admissibility of other crimes, wrongs or bad acts under Minnesota Rule of Evidence 404(b);
(e) Admissibility of relationship evidence under Minn. Stat. § 634.20;
(f) Admissibility of prior sexual conduct under Minnesota Rule of Evidence 412;
(g) Constitutional issues;
(h) Procedural issues;
(i) Aggravated sentence;
(j) Any other issues relating to a fair and expeditious trial.

Rule 11.03. General Procedures

(a) The court may receive evidence offered by the prosecutor or defendant on any omnibus issue. A party may cross-examine any witness called by any other party.

(b) Before or during the Omnibus Hearing or any other pretrial hearing, witnesses may be sequestered or excluded from the courtroom.

Rule 11.04 Omnibus Motions

Subd. 1. Probable Cause Motions.

(a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) The prosecutor and defendant may offer evidence at the probable cause hearing.

(c) The court may find probable cause on the face of the complaint or the entire record, including reliable hearsay. Evidence considered on the issue of probable cause is subject to the requirements of Rule 18.05, subd. 1.

Subd. 2. Aggravated Sentence Motion.

(a) If the prosecutor gave notice under Rule 7.03 or 19.04, subd. 6 of intent to seek an aggravated sentence, the court must determine whether the law and proffered evidence support an aggravated sentence. The court must also determine whether to conduct a unitary or bifurcated trial.

(b) In deciding whether to bifurcate, the court must determine whether the evidence supporting an aggravated sentence is otherwise admissible in the guilt phase of trial and whether a unitary trial would unfairly prejudice the defendant. The court must order a bifurcated trial if the evidence supporting an aggravated sentence includes evidence otherwise inadmissible at the guilt phase of the trial or if that evidence would unfairly prejudice the defendant in the guilt phase.

(c) If the court orders a unitary trial, the court may order separate final arguments on the issues of guilt and the aggravated sentence.

Rule 11.05. Pretrial Conference

The Omnibus Hearing may also include a pretrial conference to determine whether the case can be resolved before trial.

Rule 11.06. Continuances

The court may continue the hearing or any part of the hearing for good cause related to the case.

Rule 11.07. Determination of Issues

The court must make findings and determinations on the omnibus issues in writing or on the record within 7 business days of the Omnibus Hearing.

Rule 11.08. Pleas

(a) The defendant may enter a plea to the charged offense or to a lesser included offense as permitted in Rule 15 anytime after the commencement of the Omnibus Hearing.

(b) Entry of a plea other than guilty does not waive any jurisdictional or other issue raised for determination in the Omnibus Hearing.

Rule 11.09. Trial Date

(a) If the defendant enters a plea other than guilty, a trial date must be set.

(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party the trial must start within 60 days of the demand unless the court finds good cause for a later trial date. The time period begins on the date of the plea other than guilty.

Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

Rule 11.10. Record

Subd. 1. Record. A verbatim record must be made.

Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:

(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient affidavit of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The transcript must be provided to the prosecutor without prepayment.

(c) Transcripts provided to counsel must be filed with the court.

(d) A party offering video or audio evidence may also provide a transcript of the exhibit, which becomes part of the record.

Subd. 3. Papers and Exhibits. All papers and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.

Comment-Rule 11

If a probable cause motion is made, the court must base its probable cause determination upon the evidence set forth in Rule 18.05, subd. 1. In State v. Florence, 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976), the Supreme Court discussed the type of evidence that may be presented and considered on a motion to dismiss the complaint for lack of probable cause. Nothing in that case or in the rule prohibits a defendant from calling any witness to testify for the purpose of showing an absence of probable cause. In determining whether to dismiss a complaint under Rule 11.04 for lack of probable cause, the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest. Rather, under Florence, the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial.

By the Omnibus Hearing, the prosecution will have given the Rasmussen and Spreigl notices; the Rasmussen hearing will have been either waived or demanded; the discovery required without order of court will have been completed; and pretrial motions will have been served. (In the case of an indictment the pre-trial motions should include any motion to suppress based on the disclosures contained in the Rasmussen notice under Rule 19.04, subd. 6).

The purpose of the Omnibus Hearing is to avoid a multiplicity of court appearances on these issues with a duplication of evidence and to combine all of the issues that can be disposed of without trial into one appearance. Early resolution of motions provides for more efficient handling of criminal cases at subsequent stages. This includes suppression motions, evidentiary motions, and nonevidentiary motions such as motions to disclose the identity of an informant or to consolidate or sever trials or co-defendants. Early resolution of these motions also helps to focus the lawyers' attention on a smaller number of witnesses, including law enforcement officers and victims of crimes. When such motions are resolved early, uncertainty with respect to many significant issues in a case are removed. This early resolution of motions also permits timely and meaningful pretrial dispositional conferences at which time the parties can engage in significant plea agreement discussions. Setting a firm trial date and commencing a trial on that date are also important factors in minimizing delays.

By Rule 11.02 the court must also hear all motions made by the parties under Rule 10. A failure to raise known issues at the Omnibus Hearing waives that issue except lack of jurisdiction or failure of the complaint or indictment to state an offense, unless the court grants an exception to the waiver (Rule 10.03).

Rule 11.02 specifically permits a motion to dismiss a complaint for lack of probable cause, but does not permit a motion to dismiss an indictment upon this ground.

The court must also on its initiative under Rule 11.02 ascertain and hear any other issues that can be heard and disposed of before trial and any other matters that would promote a fair and expeditious trial. This would include requests or issues arising respecting discovery (Rule 9), evidentiary issues arising from the Spreigl notice (Rules 7.02, 19.04, subd. 6), or other evidentiary issues, and expressly permits a pretrial dispositional conference if the court considers it necessary. See Fed. R. Crim. P. 17.1. If such resolution is not possible, the conference may be used to determine the nature of the case so that further hearings or trial may be scheduled as appropriate. The use of such dispositional conferences is commendable and highly recommended by the Advisory Committee. To assure that the pretrial dispositional conference portion of the Omnibus Hearing is meaningful, trial courts should insist on timely discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1.

If the prosecutor has given notice under Rules 7.03 or 19.04, subd. 6(3) of intent to seek an aggravated sentence, Rule 11.04 requires the court to have a hearing to determine any pretrial issues that need to be resolved in connection with that request. This could include issues as to the timeliness of the notice under Rules 7.03 or 19.04, subd. 6. The court must determine whether the proposed grounds legally support an aggravated sentence and whether or not the proffered evidence is sufficient to proceed to trial. The rule does not provide a standard for determining insufficiency of the evidence claims and that is left to case law development. If the aggravated sentence claim will be presented to a jury, the court must also decide whether the evidence will be presented in a unitary or a bifurcated trial and the rule provides the standards for making that determination. Even if a unitary trial is ordered for the presentation of evidence, the rule recognizes that presentation of argument on an aggravated sentence during the guilt phase of the proceedings may unduly prejudice a defendant. The rule therefore allows the court to order separate final arguments on the aggravated sentence issue, if necessary, after the jury renders its verdict on the issue of guilt.

Under State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn. 1980), if the prosecutor intends to impeach the defendant or any defense witness with evidence of prior convictions, the prosecutor must request a pretrial hearing on the admissibility of such evidence. If possible this issue should be heard at the Omnibus Hearing. See Rules 9.01, subd. 1(5) and 9.02, subd. 1(8) as to the reciprocal duties of the prosecutor and defense counsel to disclose the criminal records of the defendant and any defense

witnesses. As to the standards for determining the admissibility of the impeachment evidence, see Rule 609 of the Minnesota Rules of Evidence, State v. Jones, 271 N.W.2d 534 (Minn. 1978) and State v. Brouillette, 286 N.W.2d 702 (Minn. 1979).

By Rule 11.06 the Omnibus Hearing or any part may be continued if necessary to dispose of the issues presented. At any conference portion of an Omnibus Hearing it is permissible under Rule 11.06 to continue the evidence suppression portion of the Omnibus Hearing until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. Such a continuance would be "for good cause related to the case" under Rule 11.06, and under that rule the court could enter an order continuing both the Omnibus Hearing and the court's decision on the evidentiary issues until the day of trial. Other grounds may also support a continuance as long as the court finds that the continuance is justified under the rule. However, the court should not as a general rule or practice bifurcate the Omnibus Hearing or delay the hearing or any part of it until the day of trial when that is not justified by the circumstances of the case. To do so violates the purpose of these rules. See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.

Rule 11.07 requires appropriate findings for the determinations made on the Omnibus Hearing issues.

The intent of the Omnibus Hearing rule is that all issues that can be determined before trial must be heard at the Omnibus Hearing and decided before trial. Consequently, when the Omnibus Hearing is held before a judge other than the trial judge, the trial judge, except in extraordinary circumstances will adhere to the findings and determinations of the Omnibus Hearing judge. See State v. Coe, 298 N.W.2d 770, 771-72 (Minn. 1980) and State v. Hamling, 314 N.W.2d 224, 225 (Minn. 1982) (where this issue was discussed, but not decided).

Rule 11.08 further provides that the defendant may enter a plea including a not guilty plea at the first Omnibus Hearing appearance. This assures that if a defendant wishes to demand a speedy trial under Rule 11.09, the running of the time limit for that will not be delayed by continuing the plea until the continued Omnibus Hearing. If the trial date is continued, see Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of the continuance.

For good cause the trial may be postponed beyond the 60-day time limit upon request of the prosecutor or the defendant or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115, 120 (Minn. 1989). Even if good cause exists for postponing the trial beyond the 60-day time limit, the defendant, except in exigent circumstances, must be released, subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1, if trial has not yet commenced within 120 days after the demand is made and the not guilty plea entered. Other sanctions for violation of these speedy trial provisions are left to case law. See State v. Kasper, 411 N.W.2d 182 (Minn. 1987) and State v. Friberg, 435 N.W.2d 509 (Minn. 1989).

Rule 11.09 does not attempt to set arbitrary time limits (other than those resulting from the demand), because they would have to be circumscribed by numerous specific exclusions (See ABA Standards, Speedy Trial, 2.3 (Approved Draft, 1968)) which are covered in any event by the more general terms of the rule. See ABA Standards, Speedy Trial, 4.1, Pre-Trial Release, 5.10 (Approved Drafts, 1968) in which the consequences are set forth.

The consequences and the time limits beyond which a defendant is considered to have been denied the constitutional right to a speedy trial are left to judicial decision. See Barker v. Wingo, 407 U.S. 514, 519-36 (1972). The constitutional right to a speedy trial is triggered not when the plea is entered but when a charge is issued or an arrest is made. State v. Jones, 392 N.W.2d 224, 235 (Minn. 1986). The existence or absence of the demand under Rule 11.09 provides a factor that may be taken into account in determining whether the defendant has been unconstitutionally denied a speedy trial. See Barker v. Wingo, supra.

Rule 12. Pretrial Conference and Evidentiary Hearing in Misdemeanor Cases

Rule 12.01 Pretrial Conference

In misdemeanor cases, the court may schedule a pretrial conference. If the court does not hold a pretrial conference, pretrial motions and other issues must be heard immediately before trial.

Rule 12.02 Motions

The court must hear and determine all motions made by the parties and receive evidence offered in support of or opposition to the motion. A party may cross-examine any witness called by any other party.

Rule 12.03 Other Issues

The court must hear and determine any constitutional, evidentiary, procedural and other issues that may be resolved before trial and resolve other matters that promote a fair and expeditious trial. The court may continue the hearing for that purpose.

Rule 12.04 Hearing on Evidentiary Issues

Subd. 1. Evidence and Identification Procedures. The court must hear and determine any issues specified in Rule 7.01 if the defendant or prosecutor demands a hearing.

Subd. 2. Additional Offenses. If the prosecutor gives notice under Rule 7.02 of additional offenses and the defendant moves for a hearing, the court must determine the admissibility of that evidence under Rule 404(b) of the Minnesota Rules of Evidence, and also determine whether clear and convincing evidence exists that the defendant committed the additional offenses.

Subd. 3. Time. When a trial is to be heard by a jury, the evidentiary hearing must be held separately from the jury trial. When a trial is to be heard by the court, the evidentiary hearing may be held separately or as part of the court trial. A separate evidentiary hearing must be held immediately before trial unless the court finds good cause to otherwise order.

Rule 12.05 Amended Complaint

The complaint, if any, may be amended at the pretrial conference as prescribed by these rules.

Rule 12.06 Pleas

The defendant may enter a guilty plea to the charged offense or a different offense, as permitted in Rule 15.08.

Rule 12.07 Continuances and Determination of Issues

The pretrial conference may be continued to take testimony or for other good cause, and may be continued to the day of trial to determine issues and motions.

All motions and issues, including evidentiary issues, must be decided before trial unless otherwise agreed to by the parties. Decisions must be in writing or on the record.

Rule 12.08 Record

Subd. 1. Record. A verbatim record of the proceedings must be made unless waived by the parties.

Subd. 2. Audio and Video Evidence. If any party offers video or audio evidence, that party may provide a transcript of the evidence, which will be made a part of the record.

Subd. 3. Transcript and Filing. Rule 11.10, subds. 2 and 3 govern filings and obtaining a transcript.

Comment—Rule 12

This rule permits the court to order a pre-trial conference. Any Rasmussen issues will ordinarily be heard immediately before trial. At the pretrial conference the court will consider the same matters for which an Omnibus Hearing must be held in felony and gross misdemeanor cases (see Rule 11).

Rule 12.08, subd. 2, permits any party offering video or audio evidence to also provide to the court a transcript of the evidence. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulated to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.

Rule 12.07 provides for the continuation of the pretrial conference if necessary to dispose of the issues presented. For the purpose of taking testimony or other good cause the court may continue the determination of issues or motions until the day of trial. Such a continuance, where testimony is required, will save witnesses an additional court appearance where those witnesses would be testifying at trial.

Rule 13. Arraignment in Felony and Gross Misdemeanor Cases

Deleted

Rule 14. Pleas

Rule 14.01 Pleas Permitted

A defendant may plead:
(a) Guilty.
(b) Not guilty.
(c) Not guilty by reason of mental illness or mental deficiency.
(d) Double jeopardy or prosecution barred by Minn. Stat. § 609.035. Either may be plead with or without the plea of not guilty.

Rule 14.02 Who May Plead

Subd. 1. Felony and Gross Misdemeanor Charges. A plea in cases involving felony or gross misdemeanor charges must be made by an individual defendant in person on the record.

Subd. 2. Misdemeanor Charges. A plea in cases involving misdemeanor charges may be made by an individual defendant either in person on the record, by ITV, or by petition to plead guilty under Rule 15.03, subd. 2. The plea may be entered by counsel or by ITV if the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present.

Subd. 3. Corporate Defendant. A plea by a corporate defendant must be made by counsel or an authorized corporate officer. The plea may be made on the record or in writing.

Subd. 4. Defendant's Refusal to Plead. If the defendant refuses to plead, or if the court refuses to accept a plea of guilty, the court must proceed as if the defendant had entered a plea of not guilty.

Subd. 5. Defendant Corporation's Failure to Appear. If a defendant corporation fails to appear, the court may enter judgment of conviction and impose sentence as may be appropriate on proof of commission of the charged offense.

Rule 14.03 Timing of Pleas

(a) In misdemeanor cases, the defendant may enter any plea, including a guilty plea, as early as the Rule 5 hearing.

(b) In gross misdemeanor cases, the defendant may plead guilty at the Rule 5 hearing if the defendant has had an opportunity to consult with counsel; otherwise entry of a guilty plea must await the Rule 8 or Omnibus Hearing. The defendant cannot enter any other plea until the Omnibus Hearing.

(c) In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus Hearing.

(d) A defendant may also appear in court at proceedings after those listed above to plead guilty to the charged offense. To schedule an appearance, the defendant must file a written request with the court indicating the offense to which the defendant wishes to plead guilty. The court must schedule a hearing within 14 days after the request is filed. The court must then notify the defendant and the prosecutor of the time and place of the hearing.

Comment—Rule 14

Notice of a defense or defenses under Rule 9.02, subd. 1(5) does not obviate the necessity for a plea under Rule 14.

Rule 20.02, subds. 6(2) and 7, governing the procedure upon the defense of mental illness or mental deficiency, contemplate that a defendant shall plead both not guilty and not guilty by reason of mental illness or deficiency when intending to put in issue both guilt on the elements of the offense charged and mental responsibility by reason of mental illness or deficiency.

A conditional plea of guilty may not be entered when the defendant reserves the right to appeal the denial of a motion to suppress evidence or any other pretrial order. State v. Lothenbach, 296 N.W.2d 854

(Minn. 1980). One option, as authorized by Rule 26.01 subd. 3, is to plead not guilty, stipulate the facts, waive the jury trial, and, if there is a finding of guilty, appeal the judgment of conviction. Id. A guilty plea also waives any appellate challenge to an order certifying the defendant as an adult. Waynewood v. State, 552 N.W.2d 718 (Minn. 1996).

In misdemeanor cases, by Rule 14.02, subd. 2, before accepting such a plea through counsel, the court should determine whether counsel has advised the defendant of the rights and information contained in Rule 15.02. See also Rule 26.03, subd. 1(3) (defendant's presence at trial and sentencing) and Rule 27.03, subd. 2 (defendant's presence at sentencing).

Rule 15. Guilty Plea Procedures

Rule 15.01 Felony and Gross Misdemeanor Cases

Subdivision 1. Guilty Plea. Before the judge accepts a guilty plea, the defendant must be sworn and questioned by the judge with the assistance of counsel as to the following:

1. Name, age, date and place of birth, and whether the defendant is disabled in communication and, if so, whether a qualified interpreter has been provided for the defendant under Rule 8 of the General Rules of Practice for the District Courts.

2. Whether the defendant understands that the crime charged is (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota.

3. Whether the defendant understands the defendant is pleading guilty to the offense of (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota, and understands the terms of the plea agreement, if any (state the terms with specificity).

4. The judge must ensure:

a. The defendant had sufficient time to discuss the case with defense counsel.

b. The defendant is satisfied that defense counsel is fully informed as to the facts of the case, and defense counsel represented the defendant's interests and fully advised the defendant.

c. Neither the defendant nor any other person has been given any promises other than those in the plea agreement, or been threatened by anyone, to get the defendant to plead guilty.

d. The defendant had an opportunity to ask questions of the court or make a statement before stating the facts of the crime.

5. The judge must determine whether the defendant:

a. is under the influence of drugs or intoxicating liquor;
b. has a mental disability; or
c. is undergoing medical or psychiatric treatment.

6. The judge must also ensure defense counsel has told the defendant and the defendant understands:

a. Upon a plea of not guilty, there is a right to a trial by jury and a finding of guilty is not possible unless all jurors agree.

b. There will not be a trial by either a jury or a judge without a jury if the defendant pleads guilty.

c. By pleading guilty the defendant waives the right to a trial by a jury or a judge on the issue of guilt.

d. If the defendant pleads not guilty and has a trial by jury or judge, the defendant will be presumed to be innocent until proven guilty beyond a reasonable doubt.

e. If the defendant pleads not guilty and has a trial, the prosecutor will be required to have the witnesses testify in open court in the defendant's presence, and the defendant will have the right, through defense counsel, to question these witnesses.

f. The defendant waives the right to have witnesses testify in the defendant's presence in court and be questioned by defense counsel.

g. If the defendant pleads not guilty and has a trial, the defendant will be entitled to require any defense witnesses to appear and testify.

h. The defendant waives the right to subpoena witnesses.

i. The maximum penalty the judge could impose for the crime charged (taking into consideration any prior convictions) is imprisonment for _____ months or _____years.

j. If a minimum sentence is required by statute, the judge may impose a sentence of imprisonment of not less than _____ months for the crime charged.

k. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.

l. If the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

m. The prosecutor is seeking an aggravated sentence (if applicable).

n. If the court does not approve the plea agreement, the defendant has an absolute right to withdraw the guilty plea and have a trial.

o. If the plea of guilty is not accepted by the court, or is withdrawn by the defendant, or is vacated on appeal or other review, the defendant will stand trial on the original charge(s), including any charges dismissed under the plea agreement, and the prosecutor may proceed just as if there had never been an agreement.

p. If the defendant pleads not guilty and has a jury trial, the defendant can decide to testify at trial, but if the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.

q. The defendant waives the right to testify, and agrees to tell the court about the facts of the crime.

r. The defendant with knowledge and understanding of all these rights still wishes to enter a plea of guilty or instead wishes to plead not guilty.

7. The judge must inquire whether the defendant makes any claim of innocence.

8. The defendant must state the factual basis for the plea.

Subd. 2. Aggravated Sentence. Before the judge accepts an admission of facts in support of an aggravated sentence, the defendant must be sworn and questioned by the judge with the assistance of defense counsel. This must be done separately from the inquiry that is required by subdivision 1. The inquiry must include whether the defendant:

1. Understands that the prosecutor is seeking a sentence greater than the presumptive guideline sentence or an aggravated sentence.

2. Understands that the presumptive guideline sentence for the crime to which the defendant has pled guilty or otherwise has been found guilty is _____, and that the defendant could not be given an aggravated sentence greater than the presumptive guideline sentence unless the prosecutor proves facts in support of an aggravated sentence beyond a reasonable doubt.

3. Understands that the sentence in this case will be an aggravated sentence of _____, or will be left to the judge to decide.

4. Has had sufficient time to discuss this aggravated sentence with defense counsel.

5. Is satisfied that defense counsel is fully informed as to the facts supporting an aggravated sentence and has represented defendant's interests and fully advised the defendant.

6. The judge must also ensure defense counsel has told the defendant and defendant understands that:

a. Even though the defendant has pled guilty to or has otherwise been found guilty of the crime of _____, defendant may contest the facts alleged by the prosecutor that would support an aggravated sentence.

b. If defendant contests the facts alleged in support of an aggravated sentence, the defendant has a right to a trial by a jury or a judge to determine whether the facts have been proven, and a finding that the facts are proven is not possible unless all jurors agree.

c. The defendant waives the right to a trial by a jury or a judge of the facts in support of an aggravated sentence.

d. At trial before a jury or a judge, the defendant would be presumed not to be subject to an aggravated sentence, and the court could not impose an aggravated sentence unless the facts in support of the aggravated sentence are proven beyond a reasonable doubt.

e .If the defendant contests the facts alleged in support of an aggravated sentence and has a trial by a jury or a judge, the prosecutor will be required to have the prosecution witnesses testify in open court in the defendant's presence, and the defendant will have the right, through defense counsel, to question these witnesses.

f. The defendant waives the right to have witnesses testify in the defendant's presence and be questioned by defense counsel.

g. If the defendant contests the facts alleged in support of an aggravated sentence and has a trial by a jury or a judge, the defendant will be entitled to require any defense witnesses to appear and testify.

h. The defendant waives the right to subpoena witnesses.

i. If the defendant contests the facts in support of an aggravated sentence and has a trial by a jury or a judge, the defendant can decide to testify if the defendant wishes, but if the defendant decides not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.

j. The defendant waives the right to remain silent and agrees to tell the court about the facts supporting an aggravated sentence.

k. With knowledge and understanding of these rights, the defendant still wants to admit the facts in support of an aggravated sentence or instead wants to contest these facts and have a trial by a jury or a judge.

7. The defendant must state the factual basis for an aggravated sentence.

Rule 15.02 Misdemeanor Cases

Subd. 1. Guilty Plea. Before the court accepts a plea of guilty to any misdemeanor offense punishable upon conviction by incarceration, the plea agreement must be explained in open court. The defendant must then be questioned by the court or counsel as to whether the defendant:

1. Understands that the crime charged is (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota, and that the defendant is pleading guilty to the crime of (name of offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota.

2. Understands that the maximum possible sentence is 90 days imprisonment and a fine in the amount allowed by applicable law. (Under the applicable law, if the maximum sentence is less, it should be so stated.)

3. Understands that, if the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

4. Understands there is a right to the assistance of counsel at every stage of the proceedings and that defense counsel will be appointed for a defendant unable to afford counsel.

5. Understands and waives the right to:

(a) trial by the court or a jury and that a finding of guilty is not possible in a jury trial unless all jurors agree;
(b) confront and cross-examine all prosecution witnesses;
(c) subpoena and present defense witnesses;
(d) testify or remain silent at trial or at any other time;
(e) be presumed innocent and that the prosecutor must prove the case beyond a reasonable doubt; and

(f) a pretrial hearing to contest the admissibility at trial of any confessions or admissions or of any evidence obtained from a search and seizure.

6. Understands the nature of the offense or offenses charged.

7. Believes that what the defendant did constitutes the offense to which the defendant is pleading guilty.

Subd. 2. Factual Basis. After explaining the defendant's rights, the judge, with the assistance of counsel, must question the defendant to determine a factual basis for all elements of the offense to which the defendant is pleading guilty.

Subd. 3. Guilty Plea at First Appearance. If the guilty plea is entered at the defendant's first appearance in court, the statement as to the defendant's rights required by Rule 5.01 may be combined with the questioning required above prior to entry of a guilty plea.

Rule 15.03 Alternative Methods in Misdemeanor Cases

Subd. 1. Group Warnings. The judge may advise a number of defendants at once as to the their constitutional rights as specified in Rule 15.02, subd. 1, questions 2 through 5 above, and as to the consequences of a plea.

The court must first determine whether any defendant is disabled in communication. If so, the court must provide the services of a qualified interpreter to that defendant and should provide the warnings contemplated by this rule to that defendant individually. The judge's statement in a group warning must be recorded and each defendant when called before the court must be asked whether the defendant heard and understood the statement. The defendant must then be questioned on the record as to the remaining matters specified in Rule 15.02.

Subd. 2. Petition to Plead Guilty. As an alternative to the defendant personally appearing in court, the defendant or defense counsel may file with the court a petition to plead guilty. The petition must be signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.

Rule 15.04 Plea Discussions and Agreements

Subd. 1. Propriety of Plea Discussions and Agreements. The prosecutor must engage in plea discussions and reach a plea agreement with the defendant only through defense counsel unless the defendant is pro se.

Subd. 2. Relationship Between Defense Counsel and Defendant. Defense counsel must enter into a plea agreement only with the consent of the defendant and must ensure that the decision to enter a plea of guilty is made by the defendant.

Subd. 3. Responsibilities of the Trial Court Judge.

(1) When a plea is entered and the defendant questioned, the trial court judge must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the

plea.

(2) The judge may accept a plea agreement of the parties when the interest of justice would be served. Among the considerations appropriate in determining whether acceptance should be given are that:

(a) defendant by pleading guilty has aided in ensuring the prompt and certain application of correctional measures;

(b) defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct;

(c) concessions will make possible the application of alternative correctional measures, which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant;

(d) defendant has made trial unnecessary when good reasons exist for not having a trial;

(e) defendant has given or offered cooperation, which has resulted or may result in the successful prosecution of other offenders engaged in serious criminal conduct;

(f) defendant by pleading has aided in avoiding delay in the disposition of other cases and has contributed to the efficient administration of criminal justice.

Rule 15.05 Plea Withdrawal

Subd. 1. To Correct Manifest Injustice. At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentencing. If a defendant is allowed to withdraw a plea after sentencing, the court must set aside the judgment and the plea.

Subd. 2. Before Sentence. In its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so. The court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.

Subd. 3. Withdrawal of Guilty Plea Without Asserting Innocence. The defendant may move to withdraw a plea of guilty without an assertion of not guilty of the charge to which the plea was entered.

Rule 15.06 Plea Discussions and Agreements Not Admissible

If the defendant enters a plea of guilty that is not accepted or is withdrawn, any plea discussions, plea agreements, and the plea are not admissible as evidence against or in favor of the defendant in any criminal, civil, or administrative proceeding.

Rule 15.07 Plea to Lesser Offenses

With the prosecutor's consent and the court's approval, the defendant may plead guilty to a lesser included offense or to an offense of lesser degree. On the defendant's motion and after hearing, the court, without the prosecutor's consent, may accept a guilty plea to a lesser included offense or to an offense of

lesser degree, provided the court is satisfied that the prosecutor cannot introduce sufficient evidence to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the indictment, complaint or tab charge. However, in felony cases, if the indictment or complaint is not amended, the reduction of the charge to an included offense or an offense of lesser degree must be done in writing or on the record. If done only on the record, the proceedings must be transcribed and filed.

Rule 15.08 Plea to Different Offense

With the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original tab charge, indictment, or complaint. If the different offense is a felony or gross misdemeanor, a new complaint must be signed by the prosecutor and filed in the district court. The complaint must be in the form prescribed by Rule 2.01 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged with the new offense by complaint or tab charge, as provided in Rule 4.02, subd. 5(3), and the original charge must be dismissed.

Rule 15.09 Record of Proceedings

Whenever a guilty plea to an offense punishable by incarceration is entered and accepted by the court, a verbatim record of the proceedings must be made, or in the case of misdemeanors, a petition to enter a plea of guilty must be filed with the court. If a written petition to enter a guilty plea is submitted to the court, it must be in the form as set forth in the Appendices to this rule. Any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule. When requested, the transcript must be completed within 30 days of the date the transcript was requested in writing and satisfactory financial arrangements were made for the transcription.

Rule 15.10 Guilty Plea to Offenses From Other Jurisdictions

Subd. 1. Request to Enter Plea. Following a guilty plea or a verdict or finding of guilty, the defendant may request permission to plead guilty to any other offense committed by the defendant within the jurisdiction of other courts in the state. The offense must be charged, and the plea must be approved, by the prosecutor having authority to charge the offenses.

Subd. 2. Fine Disbursement. Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction must be remitted by the court administrator imposing the fine to the court administrator that originally had jurisdiction over the offense. The court administrator of original jurisdiction must disburse the fine as required by law for similar fines.

Rule 15.11 Use of Guilty Plea Petitions When Defendant is Disabled in Communication

Whenever a defendant is disabled in communication, the court must not accept a guilty plea petition unless the defendant is first able to review it with the assistance of a qualified interpreter and the court establishes on the record that this has occurred. Whenever practicable, the court should use multilingual guilty plea petitions approved by the State Court Administrator to insure that the defendant understands all rights being waived, the nature of the proceedings, and the petition.

Comment—Rule 15

Although a failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty, a complete inquiry as provided for by the rule will in most cases assure and provide a record for a valid plea. The requirement that the court make certain that a defendant disabled in communication has a qualified interpreter comports with Rule 8 of the Minnesota General Rules of Practice and the general requirement for interpreter services established in Rule 5.01 and Minn. Stat. §§ 611.31-611.34, and emphasizes the critical importance of this service in the guilty plea process.

The inquiry required by paragraph 6.l. of Rule 15.01, subd. 1 and by paragraph 3 of Rule 15.02, subd. 1 (concerning deportation and related consequences), is similar to that required in a number of other states. See, e.g., California, Cal. Penal Code § 1016.5; Connecticut, Conn. Gen. Stat. Ann. § 54-1 j; Massachusetts, Mass. Gen. Laws Ann. ch. 278, § 29D; New York, N.Y. Crim. Proc. Law § 220.50 (7); Ohio, Ohio Rev. Code Ann. § 2943.031; Oregon, Or. Rev. Stat. § 135.385(2)(d); Texas, Tex. Code Crim. Proc. Ann. art. 26.13(a)(4); and Washington, Wash. Rev. Code Ann. § 10.40.200(2). In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), Congress extensively amended the Immigration and Nationality Act and greatly expanded the grounds for deportation of non-citizens convicted of crimes. Consequently, non-citizens pleading guilty will subject themselves to deportation proceedings. The consequences of such proceedings will often be more severe and more important to the non-citizen defendant than the consequences of the criminal proceedings. It is therefore appropriate that defense counsel advise non-citizen defendants of those consequences and that the court inquire to be sure that has been done. As to the obligation of defense counsel in such situations, see ABA Standards for Criminal Justice, Pleas of Guilty, 14-3.2 (3d ed. 1999). The requirement of inquiring into deportation and immigration consequences does not mean that other unanticipated non-criminal consequences of a guilty plea will justify later withdrawal of that plea. See Kim v. State, 434 N.W.2d 263 (Minn. 1989) (unanticipated employment consequences).

Before entry of a guilty plea, defense counsel should review with the defendant the effect of the Minnesota Sentencing Guidelines on the case. Further, it may be desirable for the court to order a pre-plea sentencing guidelines worksheet to be prepared so that the court, the defendant, and both counsel will be aware of the effect of the guidelines at the time the guilty plea is entered.

It is suggested by the Advisory Committee that the defendant sign a Petition to Plead Guilty in the form appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers in the petition, and that they are true.

The court in State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973), applied the Boykin standard to misdemeanors, holding that a misdemeanor guilty plea must be vacated where the record does not show a knowing and voluntary waiver of the defendant's constitutional rights. It is clear then that at least some limited inquiry is necessary on the record before a misdemeanor guilty plea is accepted, and Rule 15.02 prescribes the minimal standards for this questioning.

A prior guilty plea without the assistance of defense counsel cannot be used to aggravate a later charge absent a valid waiver of counsel on the record for the earlier plea. State v. Nordstrom, 331 N.W.2d 901 (Minn. 1983). Also, a prior guilty plea which lacks a factual basis on the record cannot be used to aggravate a later charge. State v. Stewart, 360 N.W.2d 463 (Minn. Ct. App. 1985).

Under Rule 15.03, subd. 2, a "Misdemeanor Petition to Enter Plea of Guilty" as provided for in the Appendix B to Rule 15, may be completed and filed with the court. This petition in written form contains in substance the information and questions required by Rule 15.02, subd. 1, questions 2-5. When properly completed, the petition may be filed by either the defendant or defense counsel. It is not necessary for the defendant to personally appear in court when the petition is presented to the court. If the court is satisfied that the plea is being knowingly and voluntarily entered according to the standards of Rule 15.02, subd. 1 it will dispose of the plea in the same manner as if the defendant entered the plea in person.

See Minn. Stat. § 611A.03 regarding the prosecutor's duties under the Victim's Rights Act to make a reasonable and good faith effort to inform victims of proposed plea agreements and to notify of the right to be present at sentencing to make an objection to the plea agreement or to the proposed disposition.

When the defendant is questioned as to the plea agreement under Rule 15.01, the court must inform the defendant if the plea agreement is rejected, unless the court decides to postpone a decision on acceptance or rejection until the pre-sentence report is received. Whenever a plea agreement has been rejected, the defendant must be afforded the opportunity to withdraw a plea of guilty, if entered. Rules 15.04, subd. 3(1); 15.01. If the defendant has made factual disclosures tending to disclose guilt of the offense charged, the judge should disqualify himself or herself from the trial of the case.

Rule 15.04, subd. 3(2)(d) includes situations in which certain witnesses, such as young children involved in sexual offenses, may be protected from unnecessary publicity.

Rule 15.05, subd. 1 authorizing the withdrawal of a guilty plea to correct manifest injustice does not provide guidelines for determining whether a motion for withdrawal of the plea is timely or whether withdrawal is necessary to correct manifest injustice. This is left by the rule to judicial decision. See, e.g., Chapman v. State, 282 Minn. 13, 162 N.W.2d 698 (1968).

Rule 15.06 is consistent with Rule 410 of the Minnesota Rules of Evidence, which also governs the admissibility of evidence of a withdrawn plea of guilty. Rule 410 is broader in that it makes inadmissible evidence relating to withdrawn pleas from other jurisdictions, including withdrawn pleas of nolo contendere from those jurisdictions that allow such a plea.

Before proceeding under Rule 15.10, the prosecutor in the jurisdiction having venue must charge the defendant. This may be done by complaint or indictment or, for misdemeanors, by tab charge. The charging document may be transmitted to the jurisdiction where the plea is to be entered by facsimile transmission under Rule 33.05.

It is strongly recommended that when the defendant is disabled in communication due to difficulty in speaking or comprehending English, a multilingual guilty plea petition be used that is in English as well as the language in which the defendant is able to communicate. The use of a multilingual petition would help assure that the translation is accurate and is preferable to the use of a petition that contains only the language other than English.

Rule 16. Misdemeanor Prosecution by Indictment

In misdemeanor cases prosecuted by indictment, Rule 19 (Warrant or Summons Upon Indictment) governs to the extent that it conflicts with those rules that would otherwise govern the misdemeanor prosecution.

Rule 17. Indictment, Complaint and Tab Charge

Rule 17.01 Prosecution by Indictment, Complaint or Tab Charge

Subd. 1. Offenses Punishable by Life Imprisonment. An offense punishable by life imprisonment must be prosecuted by indictment. The prosecutor may initially proceed by a complaint after an arrest without a warrant or as the basis to issue an arrest warrant. Subsequent procedure must be in accordance with Rules 8 and 19. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided by Rule 2.

Subd. 2. Misdemeanor and Gross Misdemeanor Offenses. Misdemeanors and designated gross misdemeanors as defined by Rule 1.04(a)-(b) may be prosecuted by tab charge. A complaint must be subsequently served and filed for designated gross misdemeanors as required by Rule 4.02, subd. 5(3).

Subd. 3. Indictment Following Arrest or Complaint. The arrest of a person by arrest warrant issued in a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5(2) against a person arrested without a warrant will not preclude an indictment for the offense charged or for an offense arising out of the same conduct.

Rule 17.02 Nature and Contents

Subd. 1. Complaint. A complaint must be substantially in the form required by Rule 2.

Subd. 2. Indictment. An indictment must contain a written statement of the essential facts constituting the offense charged and be signed by the grand jury foreperson.

Subd. 3. Indictment and Complaint. For each count, the indictment or complaint must cite the statute, rule, regulation, or other provision of law the defendant allegedly violated. Error in the citation or its omission is not a ground to dismiss or reverse a conviction if the error or omission did not prejudice the defendant. Each count can charge only one offense. Allegations made in one count may be incorporated by reference in another count. An indictment or complaint may contain counts for the different degrees of the same offense, or counts for lesser or other included offenses. The same indictment or complaint may contain counts for murder and manslaughter. The indictment or complaint may allege in one count alternative theories of committing the offense or that the means by which the defendant committed the offense are unknown.

Subd. 4. Administrative Information. The indictment or complaint must contain other administrative information as authorized and published by the State Court Administrator.

Rule 17.03 Joinder of Offenses and of Defendants

Subd. 1. Joinder of Offenses. When the defendant's conduct constitutes more than one offense, each offense may be charged in the same indictment or complaint in a separate count.

Subd. 2. Joinder of Defendants. When two or more defendants are charged with the same offense, they may be tried separately or jointly at the court's discretion. To determine whether to order joinder or separate trials, the court must consider:

(1) the nature of the offense charged;
(2) the impact on the victim;
(3) the potential prejudice to the defendant; and

(4) the interests of justice.

In all cases any one or more of the defendants may be convicted or acquitted.

Subd. 3. Severance of Offenses or Defendants.

(1) Severance of Offenses. On motion of the prosecutor or the defendant, the court must sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge; or

(c) during trial, with the defendant's consent or on a finding of manifest necessity, the court determines severance is necessary to fairly determine the defendant's guilt or innocence of each offense or charge.

(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On a defendant's motion for severance from a codefendant because a codefendant's out-of-court statement refers to but is not admissible against the defendant, the court must determine whether the prosecutor intends to offer the statement as evidence during its case in chief. If so, the court must require the prosecutor to elect one of the following options:

(a) a joint trial at which the statement is not received in evidence;

(b) a joint trial at which the statement is only received in evidence after all references to the defendant have been deleted, if the statement's admission with the deletions will not prejudice the defendant; or

(c) the defendant's severance.

(3) Severance of Defendants During Trial. The court must sever defendants during trial, with the defendant's consent or on a finding of manifest necessity, if the court determines severance is necessary to fairly determine the guilt or innocence of one or more of the defendants.

Subd. 4. Consolidation of Indictments, Complaints or Tab Charges for Trial.

(a) The court, on the prosecutor's motion, or on its initiative, may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together if the offenses and the defendants could have been joined in a single indictment, complaint, or tab charge.

(b) On a defendant's motion, the court may order two or more indictments, complaints, tab charges, or any combination of them to be tried together even if the offenses and the defendants could not have been joined in a single indictment, complaint, or tab charge.

(c) In all cases, the procedure will be the same as if the prosecution were under a single indictment, complaint, or tab charge.

Subd. 5. Dual Representation. When 2 or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and 2 or more of them are represented by the same attorney,

the following procedure must be followed before plea and trial.

(1) The court must:

(a) address each defendant personally on the record;
(b) advise each defendant of the potential danger of dual representation; and
(c) give each defendant an opportunity to question the court on the complexities and possible consequences of dual representation.

(2) The court must elicit from each defendant in a narrative statement that the defendant:

(a) has been advised of the right to effective representation;
(b) understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;
(c) has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and
(d) voluntarily waives the constitutional right to separate counsel.

Rule 17.04 Surplusage

The court on motion may strike surplusage from the indictment, complaint, or tab charge.

Rule 17.05 Amendment of Indictment or Complaint

The court may permit an indictment or complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if the defendant's substantial rights are not prejudiced.

Rule 17.06 Motions Attacking Indictment, Complaint or Tab Charge

Subd. 1. Defects in Form. No indictment, complaint, or tab charge will be dismissed nor will the trial, judgment, or other proceedings be affected by reason of a defect or imperfection in matters of form that does not prejudice the defendant's substantial rights.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to an indictment, complaint, or tab charge must be made by motion under Rule 10.01, subd. 2 and may be based on the following grounds without limit:

(1) With regard to an indictment:

(a) The evidence admissible before the grand jury was not sufficient to establish an offense charged or any lesser or other included offense;
(b) The grand jury was illegally constituted;
(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;
(d) Fewer than 12 grand jurors concurred in the finding of the indictment;
(e) The indictment was not found or returned as required by law; or
(f) An unauthorized person was in the grand jury room during the presentation of evidence on the charge contained in the indictment, or during the grand jury's deliberations or voting.

(2) With regard to an indictment, complaint, or tab charge:

(a) The indictment, complaint or tab charge does not substantially comply with the requirements

prescribed by law to the prejudice of the defendant's substantial rights;

(b) The court lacks jurisdiction over the offense charged;

(c) The law defining the offense charged is unconstitutional or otherwise invalid;

(d) In the case of an indictment or complaint, the facts stated do not constitute an offense;

(e) The prosecution is barred by the statute of limitations;

(f) The defendant has been denied a speedy trial;

(g) There exists some other jurisdictional or legal impediment to the defendant's prosecution or conviction for the offense charged, unless provided by Rule 10.02; or

(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat. § 609.035.

Subd. 3. Time for Motion. A motion to dismiss the indictment, complaint, or tab charge must be made within the time prescribed by Rule 10.03, subd. 1. At any time during the pendency of a proceeding an objection may be made to the court's jurisdiction over the offense or that the indictment, complaint or tab charge fails to charge an offense.

Subd. 4. Effect of Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the indictment, complaint, or tab charge, the defendant must be permitted to plead if the defendant has not previously entered a plea. A plea previously entered will stand. In all cases, the defendant may continue to raise the issues on appeal if convicted after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss an indictment, complaint or tab charge for a defect in the institution of prosecution or in the indictment, complaint, or tab charge, the court must specify the grounds on which the motion is granted.

(3) Dismissal for Curable Defect. If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3), or for a defect that could be cured or avoided by an amended or new indictment or complaint, further prosecution for the same offense will not be barred. On the prosecutor's motion made within 7 days after notice of the order granting the motion to dismiss, the court must order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that may be required under Rule 6.02, subd. 1, the defendant must be released subject to such non-monetary conditions as the court deems appropriate. The specified time for such amended or new indictment or complaint must not exceed 60 days for filing a new indictment or 7 days for amending an indictment or complaint or for filing a new complaint. During the 7-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or complaint's dismissal must be stayed. If the prosecutor does not make the motion within the 7-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified, the defendant must be discharged and further prosecution for the same offense is barred unless the prosecutor has appealed as provided by law, or the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor and designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will not be barred unless the court has so ordered.

Comment—Rule 17

The complaint under Rule 2.01 and the indictment under Rule 17.02, subd. 2 must contain a written

statement of the essential facts constituting the offense charged. The statement of the evidence, supporting affidavits, or sworn testimony, showing probable cause required by Rule 2.01 are not a part of the indictment.

The required legal content of the complaint and indictment is set forth in Rules. 2.01 and 17.02, and serves the function of informing the court of the offense(s) charged and the facts establishing probable cause. In addition to this legal information, the court requires administrative information to identify the defendant and the case, as well as additional factual information about the defendant or the status of the defendant's case to fulfill the court's statutory obligations to provide such information to other agencies. There is no requirement that the complaint or indictment be submitted to the court in any particular form or format. Rule 17.02, subd. 4 requires the State Court Administrator to identify and publish the administrative content of the complaint or indictment required by the courts. A sample complaint/indictment and a listing of the administrative content approved by the State Court Administrator will be published on the Minnesota Judicial Branch website. This flexibility will allow for e-filing of the complaint or indictment.

Except to the extent that existing statutes (Minn. Stat. §§ 628.10, 628.12- 628.13, 628.15- 628.18, 628.20- 628.24, 628.27) that govern the contents of an indictment or information are inconsistent with Rule 17.02, they are not abrogated by these rules. So, to the extent they are consistent with the provisions of Rule 17.02, they may be followed in drawing complaints and indictments under these rules.

Rule 17.02, subd. 3 permits counts to be used but prohibits duplication by charging more than one offense in a single count.

Rule 17.03, subd. 5 sets forth procedures for representing two or more defendants who are jointly charged or tried, as set forth in State v. Olsen, 258 N.W.2d 898 (Minn. 1977). That case requires defendants to clearly and unequivocally waive their constitutional right to separate counsel. If a record is not made as required or if the record fails to show that the procedures were followed in every important respect, State v. Olsen, supra, places the burden on the prosecutor to establish beyond a reasonable doubt that a prejudicial conflict of interest did not exist.

Rule 17.05 leaves district courts to determine whether the defendant will be substantially prejudiced by an amendment and what steps, if any, including a continuance, may be taken to remove any prejudice that might otherwise result from an amendment. Rule 17.05 does not govern a complaint's amendment after a mistrial and before the start of the second trial. Rather, Rule 3.04, subd. 2, which provides for the free amendment of the complaint, controls. State v. Alexander, 290 N.W.2d 745 (Minn. 1980).

Grounds for a motion for dismissal of an indictment only and for a motion for dismissal of an indictment or complaint are set forth in Rule 17.06, subd. 2(1) and (2). These grounds are not intended to be exclusive.

Rule 17.06, subd. 2(1)(a) is available because Rule 18.04, subd. 1 requires a record to be made of the evidence taken before the grand jury. (See also the provisions of 18.04, subd. 1 for the conditions in which the record may be disclosed to the defendant. And see also Rule 18.05, subd. 2.) Upon such a motion, the admissibility and sufficiency of evidence pertaining to indictments is governed by Rules 18.05, subd. 1, and 18.05, subd. 2.

Rule 17.06, subd. 2(2)(f) leaves to judicial decision the constitutional or other requirements of a speedy trial as well as the effect of denying a defendant's demand for trial under Rule 11.08-.09 and Rule 6.06.

By Rule 10.03, subd. 1, a motion to dismiss an indictment or complaint must be served no later than 3 days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases, by Rule 17.06, subd. 3, a motion to dismiss a complaint or tab charge must be served at least 3 days before the pretrial conference or, at least 3 days before the trial if no pretrial conference is held, unless this time is extended for good cause.

The first sentence of Rule 17.06, subd. 4 contemplates that a defendant may plead not guilty and also make a motion to dismiss if the defendant wishes.

To make the basis for dismissal based on a defect in the institution of the prosecution or in the indictment or complaint apparent, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3) for misdemeanor cases, or for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within 7 days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint. On such a motion, the court must continue the case for no more than 7 days pending the filing of a new complaint, or amending of the complaint or indictment, or for 60 days pending the filing of a new indictment. This filing requirement for a new or amended complaint is not satisfied until the complaint is signed by the judge or other appropriate issuing officer and then filed with the court administrator.

During the time for such a motion and during any continuance, dismissal of the charge is stayed. In a misdemeanor case, the defendant must not be kept in custody. Rule 17.06, subd. 4(3), does not govern dismissals for defects that could not be cured at the time of dismissal by a new or amended complaint or indictment. Therefore, when a complaint or indictment has been dismissed because of insufficient evidence to establish probable cause, the prosecutor may re-prosecute if further evidence is later discovered to establish probable cause. Also under Rule 4.02, subd. 5(3), even if prosecution is reinstituted within the specified period after having been dismissed for failure to file a timely complaint, a summons rather than a warrant must be issued to secure the defendant's appearance in court.

Rule 18. Grand Jury

Rule 18.01 Summoning Grand Juries

Subd. 1. When Summoned. The court must order that one or more grand juries be drawn at least annually. The grand jury must be summoned and convened whenever required by the public interest, or whenever requested by the county attorney.

On being drawn, each juror must be notified of selection. The court must prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel must be filled in the same manner as this rule provides.

Subd. 2. How Selected and Drawn. Except as provided for St. Louis County, the grand jury must be drawn from a list composed of the names of persons selected at random from a fair cross-section of the statutorily qualified residents of the county.

In St. Louis County, a grand jury list must be selected from residents of each of the 3 districts of St. Louis County. When the offense is committed nearer to Virginia or Hibbing than to the county seat, the case must be submitted to the grand jury in Virginia or Hibbing.

Rule 18.02 Organization of Grand Jury

Subd. 1. Members; Quorum. A grand jury consists of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present.

Subd. 2. Organization and Proceedings. The grand jury must be organized and its proceedings conducted as provided by statute, unless these rules direct otherwise.

Subd. 3. Charge. After swearing the grand jury, the court must instruct it on its duties.

Rule 18.03 Who May Be Present

Prosecutors, the witness under examination, qualified interpreters for witnesses disabled in communication, or for jurors with a sensory disability, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session. No person other than the jurors and any qualified interpreters for any jurors with a sensory disability may be present while the grand jury is deliberating or voting.

On the court's order and a showing of necessity, for security purposes, a designated peace officer may be present while a specified witness testifies.

If a witness at the grand jury requests, and has effectively waived the privilege against self-incrimination, or has been granted use immunity, the attorney for the witness may be present while the witness testifies, provided the attorney is present for that purpose, or the attorney's presence can be secured without unreasonably delaying the grand jury proceedings. The attorney cannot participate in the grand jury proceedings except to advise and consult with the witness while the witness testifies.

By order of the court based on a particularized showing of need, a witness under the age of 18 may be accompanied by a parent, guardian or other supportive person while that child witness testifies at the grand jury. The parent, guardian or other supportive person must not participate in the grand jury proceedings, and must not be permitted to influence the content of the witness's testimony.

In choosing the parent, guardian or other supportive person, the court must determine whether the person is appropriate, including whether the person may become a witness in the case, or may exert undue influence over the child witness. The court must instruct the person on the proper role for that person in the grand jury proceedings.

Rule 18.04 Record of Proceedings

Subd. 1. Verbatim Record. A verbatim record must be made of all statements made, evidence taken, and events occurring before the grand jury except deliberations and voting.

The record must not include any grand juror's name. The record may be disclosed only to the court or prosecutor unless the court, on the defendant's motion for good cause, or on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions of it to the defendant or defense counsel.

Subd. 2. Transcript. On the defendant's motion, and with notice to the prosecutor, the court at any time before trial must, subject to a protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of:

(1) defendant's grand jury testimony;

(2) the grand jury testimony of witnesses the prosecutor intends to call at the defendant's trial; or

(3) the grand jury testimony of any witness, if defense counsel makes an offer of proof that a witness the defendant expects to call at trial will give relevant and favorable testimony for the defendant.

Rule 18.05 Kind and Character of Evidence

Subd. 1. Admissibility of Evidence. An indictment must be based on evidence that would be admissible at trial, with these exceptions:

(1) Hearsay evidence offered only to lay the foundation for the admissibility of otherwise admissible evidence if admissible foundation evidence is available and will be offered at the trial.

(2) A report by a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant, when certified by the person as the person's report.

(3) Unauthenticated copies of official records if authenticated copies will be available at trial.

(4) Written sworn statements of the persons who claim to have title or an interest in property to prove ownership or that the property was obtained without the owner's consent, and written sworn statements of these persons or of experts to prove the value of the property, if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.

(5) Written sworn statements of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts contained in the statements.

(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents that they have examined but that are not produced at the hearing or were not previously submitted to defense counsel for examination, if the documents and summaries would otherwise be admissible. A police officer in charge of the investigation may give an oral summary.

Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an indictment if the evidence establishes probable cause to believe an offense has been committed and the defendant committed it. Reception of inadmissible evidence does not provide grounds for dismissing the indictment if sufficient admissible evidence exists to support the indictment.

Subd. 3. Presentments Abolished. The grand jury may not find or return a presentment.

Rule 18.06 Finding and Return of Indictment

An indictment may only issue if at least 12 jurors concur. The indictment must be signed by the foreperson, whether the foreperson was one of the 12 who concurred or not, and delivered to a judge in open court. If 12 jurors do not concur in issuing an indictment, the foreperson must promptly inform the court in writing. Charges filed against the defendant for offenses on which no indictment was issued

must be dismissed. The failure to issue an indictment or the dismissal of the charge does not prevent the case from again being submitted to a grand jury as often as the court directs.

Rule 18.07 Secrecy of Proceedings

Every grand juror and every qualified interpreter for a grand juror with a sensory disability present during deliberations or voting must keep secret whatever that juror or any other juror has said during deliberations and how that juror or any other juror voted.

Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecutor for use in the performance of the prosecutor's duties, and to the defendant or defense counsel under Rule 18.04 governing the record of the grand jury proceedings. Otherwise, no one may disclose matters occurring before the grand jury unless directed to do so by the court in connection with a judicial proceeding.

Unless the court otherwise directs, no person may disclose the finding of an indictment until the defendant is in custody or appears before the court, unless necessary for the issuance and execution of a summons or warrant. However, disclosure may be made by the prosecutor by notice to the defendant or defense counsel of the indictment and the time of defendant's appearance in the district court, if in the prosecutor's discretion the notice suffices to insure defendant's appearance.

Rule 18.08 Tenure and Excusal

Subd. 1. Tenure. A grand jury must be drawn for a specified period of service, not to exceed 12 months, as designated by court order. The grand jury must not be discharged, and its powers must continue until the latest of the following:

(a) the period of service is completed;
(b) its successor is drawn; or
(c) it has completed an investigation, already begun, of a particular offense.

Subd. 2. Excusal. For cause shown, the court may excuse a juror temporarily or permanently. The court may impanel another person in place of the excused juror.

Rule 18.09 Objections to Grand Jury and Grand Jurors

Subd. 1. Motion to Dismiss Indictment. Objections to the grand jury panel and to individual grand jurors must be made by motion to dismiss the indictment as this rule provides.

Subd. 2. Grounds for Dismissal. A motion to dismiss an indictment may be based on any of the following:

(a) the grand jury was not selected, drawn or summoned in accordance with law;
(b) an individual juror was not legally qualified; or
(c) the juror's state of mind prevented the juror from acting impartially.

An indictment must not be dismissed on the ground that one or more of the grand jurors was not statutorily qualified if it appears from the records that 12 or more qualified jurors concurred in finding the indictment.

Comment—Rule 18

Rule 18.01, subd. 2 complies with the constitutional requirement that the persons on the grand jury list must be selected at random from a fair cross section of the qualified residents of the county. The method by which this must be done is left to the determination of the jury commission or judges making the selection of persons for the list.

Rule 18.01, subd. 2 includes special provisions governing St. Louis County based on Minn. Stat. §§ 484.46 and 484.48.

Rule 18.03 allows qualified interpreters for jurors with sensory disabilities to be present during grand jury proceedings including deliberations or voting. This is in accord with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. § 12101 et seq.

Under Rule 18.04, subd. 1, the record may be disclosed to the court or to the prosecutor, and to the defendant for good cause, which would include a "particularized need," Dennis v. United States, 384 U.S. 855, 869-70 (1966), or on a showing that grounds exist for a motion to dismiss the indictment because of occurrences before the grand jury. In addition, the defendant, under Rule 9.01, subd. 1, may obtain from the prosecutor any portions of the grand jury proceedings already transcribed and possessed by the prosecutor.

Rule 18.04, subd. 2, supplementing the discovery rules (Rule 9.01, subd. 1), permits the defendant to obtain a transcript of the testimony of grand jury witnesses, subject to protective orders under Rule 9.03, subd. 5. See ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iii) (Approved Draft, 1970). This rule does not preclude the court from ordering that the defendant be supplied with the transcript during the trial, on a showing of good cause.

Canon 5 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System bolsters the confidentiality requirement of interpreters under Rule 18.07.

Rule 18.07 leaves it to the discretion of the prosecutor to determine whether to notify the defendant or defense counsel of the indictment without the issuance of a warrant or summons. But see Minn. Stat. § 628.68 (leaving it to the court's, not prosecutor's, discretion).

The effect of a dismissal of an indictment under Rule 18.09 is covered by Rule 17.06, subd. 4.

Rule 19. Warrant or Summons Upon Indictment; Appearance Before District Court

Rule 19.01 Issuance

On the filing of an indictment, the court must issue a warrant for the arrest of each defendant named in the indictment, except that the court may issue a summons instead of a warrant when the prosecutor requests or the court directs, or if the defendant is a corporation.

The court may order an indicted defendant already in custody to be brought before the court at a specified date and time.

More than one warrant or summons may be issued for the same defendant. If a defendant, other than a corporation, fails to appear in response to a summons, a warrant must issue.

Rule 19.02 Form

Subd. 1. Warrant. The warrant must:

(a) be signed by a judge;
(b) contain the defendant's name or, if unknown, any name or description by which the defendant can be identified with reasonable certainty;
(c) describe the offense charged; and
(d) command the defendant's arrest and appearance in court.

The amount of bail and other conditions of release may be set by the court and stated in the warrant.

Subd. 2. Summons. The summons must be signed by the court and must summon the defendant to appear before the court at a specified time and place to answer to the indictment. A copy of the indictment must be attached to the summons.

Rule 19.03. Service of the Indictment

Subd. 1. By Whom. Any officer authorized by law may execute the warrant, and if authorized may also serve the summons. The court administrator may serve the summons by mail.

Subd. 2. Territorial Limits. The warrant may be executed or the summons served any place in the state, except where prohibited by law.

Subd. 3. Manner. The warrant must be executed or the summons served as specified in Rule 3.03, subd. 3.

Subd. 4. Certification. The execution of a warrant or the service of a summons must be certified as specified in Rule 3.03, subd. 4.

Subd. 5. Unexecuted Warrants. At the prosecutor's request made during the pendency of the indictment, a warrant returned unexecuted or a summons returned unserved, or a duplicate of either, may be delivered to any authorized officer or person for execution or service.

Rule 19.04 Defendant's Appearance in Court

Subd. 1. Appearance. The defendant must be taken promptly before the district court that issued the warrant.

Subd. 2. Statement to Defendant. A defendant appearing initially in the district court under an arrest warrant, or in response to a summons, must be advised of the charges. If the defendant has not received a copy of the indictment, the defendant must be provided with one.

The court must also advise the defendant in accordance with Rule 5.03 (Statement of Rights).

Subd. 3. Appointment of Counsel. If the defendant is not represented by counsel and cannot financially afford counsel, the court must appoint counsel as set out in Rule 5.04.

Subd. 4. Date for Arraignment. The court may arraign the defendant at the defendant's initial appearance on the indictment, if the defendant so requests and the court consents.

If the court does not arraign the defendant at the initial appearance, it must set a date for the arraignment not more than 7 days from the initial appearance. The court may extend this date for good cause.

At the arraignment, whether at the initial appearance or at some later appearance before the Omnibus Hearing, the defendant may only enter a plea of guilty. A defendant who does not wish to plead guilty must not be asked to enter any other plea, and the arraignment must be continued until the Omnibus Hearing, where, under Rule 11.08 (Pleas), the defendant must plead to the indictment, or be given additional time to plead.

Subd. 5. Omnibus Hearing Date and Procedure. If at arraignment the defendant does not plead guilty, the court must schedule an Omnibus Hearing under Rule 11 not more than seven 7 days from the arraignment, unless the court extends the time for good cause.

Subd. 6. Notice by Prosecutor. The procedures set out in Rules 7.01 (Notice of Omnibus Issues), 7.02 (Notice of Other Offenses), and 7.03 (Notice of Intent to Seek Aggravated Sentence) apply to cases prosecuted by indictment.

Subd. 7. Completion of Discovery. The procedure set out in Rule 7.04 for completion of discovery in felony, gross misdemeanor, and misdemeanor cases applies to cases prosecuted by indictment.

Rule 19.05 Bail or Conditions of Release

At the defendant's initial appearance in the district court following indictment, the court may, in accordance with Rule 6 (Pretrial Release), set bail or other conditions of release, or may continue or modify bail or conditions of release previously ordered.

Rule 19.06 Record

A verbatim record must be made at the defendant's initial appearance, arraignment, and Omnibus Hearing.

Comment—Rule 19

Rule 19 relating to the warrant or summons on an indictment and the subsequent procedures parallels for the most part Rules 3, 4, 5, 8, and 11 governing the warrant or summons on a complaint and the procedures subsequently followed, all of which lead up to the Omnibus Hearing under Rule 11. Rule 19 reflects the necessary differences between the procedures under an indictment and under a complaint.

If a corporation does not respond to a summons issued under Rule 19.01 the court may proceed as provided in Rule 14.02, subd. 5.

The parties must serve their motions under Rule 10 at least 3 days before the Omnibus Hearing (Rule 10.03) (including motions to suppress based on the Rasmussen notice given under Rule 19.04, subd. 6). See also comments to Rules 11.02 and 11.04.

The Omnibus Hearing must be held in the district court in accordance with the provisions of Rule 11. See comments to Rule 11. If at the Omnibus Hearing the defendant wishes to challenge the sufficiency of

the evidence heard by the grand jury to support the indictment, Rules 17.06, subd. 2(1)(a) and 18.05, subds. 1 and 2 govern that challenge. The provision in Rule 11.03 concerning a motion that an insufficient showing of probable cause has been made applies only to complaints and not to indictments.

Rule 20. Mentally Ill or Mentally Deficient Defendants.

Rule 20.01 Competency Proceedings

Subd. 1. Waiver of Counsel in Competency Proceedings. A defendant must not be allowed to waive counsel if the defendant lacks ability to:

(a) knowingly, voluntarily, and intelligently waive the right to counsel;
(b) appreciate the consequences of proceeding without counsel;
(c) comprehend the nature of the charge;
(d) comprehend the nature of the proceedings;
(e) comprehend the possible punishment; or
(f) comprehend any other matters essential to understanding the case.

The court must not proceed under this rule before a lawyer consults with the defendant and has an opportunity to be heard.

Subd. 2. Competency to Participate in the Proceedings. A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant lacks ability to:

(a) rationally consult with counsel; or
(b) understand the proceedings or participate in the defense due to mental illness or deficiency.

Subd. 3. Competency Motion. If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue. The defendant's consent is not required. The motion must provide supporting facts, but must not include communications between the defendant and defense counsel if disclosure would violate the attorney-client privilege. By bringing the motion, defense counsel does not waive the attorney-client privilege. If the court determines that reason exists to doubt the defendant's competency, the court must suspend the criminal proceedings and proceed as follows.

(a) In misdemeanor cases, the court must:

(1) proceed under this rule as in felony or gross misdemeanor cases;
(2) begin civil commitment proceedings; or
(3) dismiss the case, unless dismissal would be contrary to the public interest.

(b) In felony or gross misdemeanor cases, the court must, on motion, determine probable cause. If probable cause exists, the court must order an examination of the defendant's mental condition. If no probable cause exists, the charges must be dismissed.

Subd. 4. Examination and Report.

(a) Medical Examination. The court must appoint at least one examiner as defined in Minn. Stat. ch. 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition.

If the defendant is entitled to release, and the examination can be done on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the examination a condition of release. If the defendant is not entitled to release or the examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. Any examiner may obtain and review the report of any prior examination under this rule.

The court must order that if any examiner appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention, the examiner must promptly notify the prosecutor, defense counsel, and the court.

(b) Report of Examination. The court-appointed examiner must forward a written report to the judge who ordered the examination. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report must not be otherwise disclosed until the competency hearing. The report must include:

(1) A diagnosis of the defendant's mental condition.
(2) If the defendant is mentally ill or deficient, an opinion as to:

(a) the defendant's capacity to understand the proceedings or participate in the defense;

(b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;

(c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;

(d) whether a substantial probability exists that the defendant will ever attain competency to proceed;

(e) the estimated time required to attain competency to proceed; and

(f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.

(3) The factual basis for the diagnosis and opinions.

(4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or deficiency.

Subd. 5. Competency Determination.

(a) Request for Hearing. The court must hold a hearing if a party files written objections to the

competency report within ten (10) days after receipt.

(b) Hearing Process. The party that requested the competency hearing must present evidence first. If the court requested the competency report, the prosecutor must present evidence first unless the court otherwise orders.

(c) Evidence. Evidence of the defendant's mental condition may be admitted, including the court-appointed examiner's report. The court-appointed examiner or any person designated by the examiner as a source of information for preparation of the report other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined by any party.

(d) Defense Counsel as Witness. Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the attorney-client privilege. Testifying does not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel regarding the attorney-client relationship and the defendant's ability to communicate with counsel. The court must not require counsel to divulge communications protected by the attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning responses to the court's inquiry.

(e) Determination Without Hearing. If no party timely filed objections and the court did not hold a competency hearing, the court may determine the defendant's competency on the examiner's report.

(f) Burden of Proof and Decision. If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.

Subd. 6. Procedure After Competency Proceedings.

(a) Finding of Competency. If the court finds the defendant competent, the criminal proceedings must resume.

(b) Finding of Incompetency. If the court finds the defendant incompetent, and the charge is a misdemeanor, the charge must be dismissed. If the court finds the defendant incompetent, and the charge is a felony or gross misdemeanor, the proceedings must be suspended except as provided in Rule 20.01, subd. 8.

(1) Finding of Mental Illness. If the court finds the defendant mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under commitment, the court must commence a civil commitment proceeding. The court must supervise the commitment as provided in Rule 20.01, subd. 7.

(2) Finding of Mental Deficiency. If the court finds the defendant mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under commitment, the court must cause civil commitment proceedings to be instituted against the defendant. The court must supervise the commitment as provided in Rule 20.01, subd. 7.

(3) Appeal. Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in the court. A verbatim record must be made in all

civil commitment proceedings instituted under this rule.

Subd. 7. Continuing Supervision. The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, the person charged with the defendant's supervision, must report to the court periodically, not less than once every six months, on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. Reports must be furnished to the prosecutor and defense counsel.

The prosecutor, defense counsel, the defendant, or the person charged with the defendant's supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. If the court finds the defendant competent to proceed, the criminal proceedings must resume. The court and the prosecutor must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

Subd. 8. Dismissal of Criminal Charge.

(1) Felonies. Except when the defendant is charged with murder, the criminal charges must be dismissed three years after the date of finding the defendant incompetent to proceed unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant regains competency.

(2) Gross Misdemeanors. The criminal charges must be dismissed 30 days after the date of finding the defendant incompetent to proceed unless before that date the prosecutor files a written notice of intent to prosecute when the defendant regains competency. If a notice has been filed, the charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted.

Subd. 9. Issues Not Requiring Defendant's Participation. The defendant's incompetence does not preclude defense counsel from making an objection or defense before trial that can be fairly determined without the defendant's participation.

Subd. 10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible at the competency proceeding.

Subd. 11. Credit for Confinement. If the defendant is convicted, any time spent confined to a hospital or other facility for a mental examination under this rule must be credited as time served.

Rule 20.02 Defense of Mental Illness or Deficiency—Mental Examination

Subd. 1. Authority to Order Examination. The trial court may order the defendant's mental examination if:

(a) the defense notifies the prosecutor of its intent to assert a mental illness or deficiency defense pursuant to Rule 9.02, subd. 1(5);

(b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or deficiency; or

(c) the defendant offers evidence of mental illness or deficiency at trial.

Subd. 2. Defendant's Examination. If the court orders a mental examination of the defendant, it must appoint at least one examiner as defined in Minn. Stat. ch. 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition. The court may order the defendant to be confined to a hospital or other facility for up to 60 days to complete the examination if special need is shown. If any party has retained an examiner, the examiner must be permitted to observe the mental examination and examine the defendant.

Subd. 3. Defendant's Refusal to be Examined. If the defendant does not participate in the examination and thereby prevents the examiner from making an adequate report to the court, the court may:

(a) prohibit the defendant from introducing evidence of the defendant's mental condition;
(b) strike any previously introduced evidence of the defendant's mental condition;
(c) permit any party to introduce evidence of the defendant's refusal to cooperate and to comment on it to the trier of fact;
(d) make any other ruling as it deems just.

Subd. 4. Report of Examination. The examiner must forward a written examination report to the court. The court must provide copies of the report to the prosecutor and defense. The contents of the report must not otherwise be disclosed except as provided in this rule. The report must contain:

(a) A diagnosis of the defendant's mental condition as requested by the court;

(b) If directed by the court, an opinion as to whether, because of mental illness or deficiency, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong;

(c) Any opinion requested by the court that is based on the examiner's diagnosis;

(d) A statement of the factual basis on which the diagnosis and any opinion are based; and

(e) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the defendant's unwillingness resulted from mental illness or deficiency.

Subd. 5. Admissibility of Examination. Evidence derived from the examination is not admissible against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If the defendant's mental condition is an issue, any party may call the court-appointed examiner to testify as a witness at trial, and the examiner is subject to cross-examination by any other party. The report or portions of it may be received in evidence to impeach the examiner.

Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, Rule 20.02, or both, the admissibility at trial of any statements the defendant made for the purpose of the examination and any evidence derived from the statements must be determined by the following rules.

(1) Sole Defense of Mental Condition. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely solely on the defense of mental illness or deficiency, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or deficiency under

Rule 14.01(c), statements the defendant made for the purpose of the mental examination and evidence derived from the statements are admissible at the trial on the issue of the defendant's mental condition.

(2) Multiple Defenses. If a defendant relies on the defense of mental illness or deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency, the statements the defendant made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or deficiency stage of the trial.

Subd, 7. Trial Procedure for Multiple Defenses.

(a) Order of Proof. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely on the defense of mental illness or deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency, the court must separate the two defenses. The defense of not guilty must be heard and determined first. The defense of mental illness or deficiency must be heard and determined second.

(b) Jury Instructions. The jury must be informed at the start of the trial that:

(1) the defendant has offered two defenses;
(2) the defense of not guilty will be tried first and the defense of mental illness or deficiency will be tried second;
(3) if the jury finds that the elements of the offense have not been proved, the defendant will be acquitted;
(4) if the jury finds the elements of the offense have been proved then the defense of mental illness or deficiency will be tried and determined by the jury.

(c) Proof of Elements—Effect. The court or jury must determine whether the elements of the offense have been proved beyond a reasonable doubt. If the elements of the offense have not been proved, a judgment of acquittal must be entered.

If the defendant has been convicted in the guilt phase, then the defense of mental illness or deficiency must be tried. The jury must render a verdict or the court make a finding of:

(1) not guilty by reason of mental illness;
(2) not guilty by reason of mental deficiency; or
(3) guilty.

The defendant bears the burden of proving mental illness or deficiency by a preponderance of the evidence.

Subd. 8. Effect of Not Guilty by Reason of Mental Illness or Deficiency.

(1) Mental Illness. When a defendant is found not guilty by reason of mental illness, and the defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under commitment, the court must commence a civil commitment proceeding and order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(2) Mental Deficiency. When a defendant is found not guilty by reason of mental deficiency and the

defendant is under commitment to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under such commitment, the court must commence a civil commitment proceeding. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(3) Appeal. Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in court. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings must be made.

(4) Continuing Supervision. In felony and gross misdemeanor cases, the court and the prosecutor must be notified of any proposed institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

Rule 20.03 Disclosure of Reports and Records of Defendant's Mental Examinations

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or deficiency, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or deficiency defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or deficiency when it is the sole defense, or during the mental illness or deficiency phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

Rule 20.04. Simultaneous Examinations.

The court may order a civil commitment examination under Minn. Stat. ch. 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

Comment—Rule 20

Rule 20.01, subd. 4(a), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and 20.02. This express authorization, which was adopted in 2005, is intended merely to clarify the rule and not to change it.

No limitation exists for the time or number of hearings that may be held under Rule 20.01 to determine the defendant's competency.

The definitions of mental illness and mental deficiency contained in Minn. Stat. § 611.026 and its judicial interpretations are not affected by these rules.

Rule 20.02, subd. 2, providing for the examination on a defense of mental illness or deficiency, is the same as Rule 20.01, subd. 4(a), governing the examination for competency to proceed.

Rule 20.02, subd. 8, addresses the constitutional requirements of equal protection and due process. No continuing supervision by the trial court exists in misdemeanor cases.

The prosecutor has the right to participate as a party in any civil proceedings being conducted under Minn. Stat. ch. 253B. The prosecutor could question and present witnesses and argue for the continued commitment of the defendant in the civil proceedings.

If the court orders simultaneous examinations under Rule 20.04, the examiner appointed must be qualified to provide a report for all necessary purposes.

Rule 21. Depositions

Rule 21.01 When Taken

The court may order that the testimony of a witness be taken by oral deposition before any person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:

(a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1;

(b) the prosecutor has filed a complaint or indictment, or a tab charge has been entered; and

(c) the requesting party has filed a motion and provided notice of the motion to the parties.

The order must also direct the defendant's presence at the deposition, and if the defendant is disabled in communication, direct the presence of a qualified interpreter.

Rule 21.02 Notice of Taking

The party or person at whose request the court ordered the deposition must give to every other party reasonable notice of the time and place for taking the deposition.

The notice must state the name and address of each person to be examined. Unless the court directs otherwise, the notice must be served personally on the defendants. The notice must inform the defendant of the requirement to personally attend the deposition. A copy of the court order must be attached to the notice.

An officer having custody of any of the defendants must be notified of the time and place set for the deposition, produce the defendant at the examination, and keep the defendant in the presence of the witness during the examination.

On motion of a party served with notice of the deposition, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

Rule 21.03 Expenses of Defendant and Counsel; Failure to Appear

Subd. 1. Expenses. If a defendant cannot afford travel, meals, and lodging expenses for the defendant and defense counsel's attendance at the examination, the court must direct payment of their expenses at public expense.

Subd. 2. Failure to Appear. If, after having received notice, a defendant who is not confined fails to appear at the examination without reasonable excuse, the deposition may be taken and used as though the defendant had been present.

Rule 21.04 How Taken

Subd. 1. Oral Deposition. Depositions must be taken upon oral examination, with accommodation for those who are disabled in communication.

Subd. 2. Oath and Record of Examination. The witness must be sworn, and a verbatim record of the testimony of the witness must be taken.

The testimony must be taken stenographically and transcribed unless the court directs otherwise.

If the court orders recording of the deposition testimony by other than stenographic means, the order must designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at that party's own expense.

Subd. 3. Scope and Manner of Examination--Objections--Motion to Terminate.

(a) The defendant's deposition cannot be taken without that defendant's consent.

(b) The scope and manner of examination and cross-examination must be the same as that allowed at trial. Each party possessing a statement of the witness being deposed must make it available to the other party for examination and use at the deposition if the other party would be entitled to it at trial.

(c) The person taking the deposition must record all objections made during the examination to the qualifications of the person taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceedings. Objected-to evidence is taken subject to the objections.

(d) On motion of a party or of the deponent during the deposition, and on a showing that the examination is being conducted in bad faith, or in a manner that annoys, embarrasses, or oppresses the deponent or party or elicits privileged testimony, the court that ordered the deposition may order the person conducting the examination to stop taking the deposition. The court may also limit the deposition by one or both of the following:

(1) restricting its subject matter;
(2) requiring that the examination be conducted with no one present except persons designated by the court.

On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for the order.

Rule 21.05 Transcription, Certification and Filing

When the testimony is transcribed, the person who took the deposition must certify that the witness was duly sworn and that the deposition is a verbatim record of the witness's testimony. The person must then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)." The person must promptly file it with the court, or send it by registered or certified mail to the court administrator for filing.

On a party's request, documents and other things produced during the examination of a witness, or copies of them, must be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party.

If the person producing the exhibits requests their return, the person taking the deposition must mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used as if annexed to the deposition.

Rule 21.06 Use of Deposition

Subd. 1. Unavailability of Witness. A part or all of a deposition may be used as substantive evidence at the trial or hearing to the extent it would be otherwise admissible under the rules of evidence if:

(a) the witness is dead or unable to be present or to testify at the trial or hearing because of a physical or mental illness or infirmity; or

(b) the party offering the deposition has been unable to obtain the attendance of the witness by subpoena, order of court, or other reasonable means.

Subd. 2. Inconsistent Testimony. A deposition may be used as substantive evidence at the trial or hearing to the extent it would be otherwise admissible under the rules of evidence if the witness:

(a) testifies inconsistently with the deposition; or
(b) persists in refusing to testify despite a court order to do so.

Subd. 3. Impeachment. Any deposition may also be used by any party to contradict or impeach the deponent's testimony as a witness.

A deposition may not be used if it appears that the party offering the deposition caused the deposed witness's absence, unless part of the deposition has previously been offered by another party.

Rule 21.07 Effect of Errors and Irregularities in Depositions

Subd. 1. As to Order or Notice. All errors and irregularities in the order or notice for taking a deposition are waived unless the objecting party promptly serves a written objection on the party giving the notice.

Subd. 2. As to Disqualification of Officer. Objection to taking a deposition because of a disqualification of the person taking it is waived unless made before the taking of the deposition begins, or as soon as the grounds for disqualification become known or could be discovered with reasonable diligence.

Subd. 3. As to Taking of Deposition. Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time.

Errors and irregularities occurring at the deposition that might be remedied if promptly presented are waived unless timely objected to at the deposition.

Subd. 4. As to Completion and Return of Deposition. Errors and irregularities in the transcription of the testimony, or in the way the deposition is prepared, recorded, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person taking the deposition under these rules, are waived unless a motion to suppress the deposition or some part of it occurs with reasonable promptness after a party discovers the defect, or with due diligence might have done so.

Rule 21.08 Deposition by Stipulation

The parties may by written stipulation provide that a deposition may be taken before any person, at any time or place, upon any notice, and in any manner, and that it may be used like other depositions. These rules, unless inconsistent with the stipulation, govern the taking of the deposition.

Comment—Rule 21

The requirement that a qualified interpreter be present for defendants disabled in communication is based upon Rule 8 of the General Rules of Practice for the District Courts and Minn. Stat. §§ 611.31-611.34.

The deposition may be taken before any person authorized to administer oaths designated by the order. If the deposition is taken outside the State of Minnesota, this would include any person authorized to administer oaths by the laws of Minnesota or of the state where the deposition is taken. See Moore v. Keesey, 26 Wash.2d 31, 173 P.2d 130 (1946).

Notice must normally be personally served on the defendant. But, in cases where the defendant is unavailable and time is of the essence, the court may order that notice be served on the defendant's attorney instead of the defendant. These rules do not deal with the constitutionality of the use of a deposition at trial when the defendant has not been personally notified.

Rule 21.05 does not require that the deposition be submitted to and signed by the witness. It requires only that the person before whom the deposition is taken certify that the deposition is a true record of the testimony given by the witness. Any dispute over the accuracy of the record must be dealt with under Rule 21.07, subd. 4 (completion and return of deposition).

Rule 22. Subpoena

Rule 22.01 For Attendance of Witnesses; Form; Issuance

Subd. 1. When Issued. A subpoena may be issued for attendance of a witness:

(a) before a grand jury;
(b) at a hearing before the court;
(c) at a trial before the court; or
(d) for the taking of a deposition.

Subd. 2. By Whom Issued.

(a) The court administrator issues a subpoena under the court's seal, signed but otherwise blank, to the party requesting it, who must fill in the blanks before service. The subpoena must state the name of the court and the title of the proceeding if the subpoena is for a hearing, trial, or deposition.

(b) A grand jury subpoena must be captioned "In the matter of the investigation by the grand jury of_____." (Insert here the name of the county or counties conducting the investigation.)

(c) The subpoena must command attendance and testimony at the time and place specified.

Subd. 3. Unrepresented Defendant. A defendant not represented by an attorney may obtain a subpoena by court order. The request and order may be written or oral. An oral order must be noted in the court's record.

Rule 22.02 For Production of Documentary Evidence and of Objects

A subpoena may command a person to produce books, papers, documents, or other designated objects.

The court on motion promptly made may quash or modify a subpoena if compliance would be unreasonable.

The court may direct production in court of the books, papers, documents, or objects designated in the subpoena, including medical reports and records ordered disclosed under Rule 20.03, subd. 1, before the trial or before being offered in evidence, and may permit the parties or their attorneys to inspect them.

Rule 22.03 Service

A subpoena may be served by the sheriff, a deputy sheriff, or any person at least 18 years of age who is not a party.

Service of a subpoena on a person must be made by delivering a copy to the person or by leaving a copy at the person's usual place of abode with a person of suitable age and discretion who resides there.

A subpoena may also be served by U.S. mail, but service is effective only if the person named returns a signed admission acknowledging personal receipt of the subpoena. Fees and mileage need not be paid in advance.

Rule 22.04 Place of Service

A subpoena requiring the attendance of a witness may be served anywhere in the state.

Rule 22.05 Contempt

Failure to obey a subpoena without adequate excuse is a contempt of court.

Rule 22.06 Witness Outside the State

The attendance of a witness who is outside the state may be secured as provided by law.

Comment—Rule 22

Subpoenas for attendance at a deposition may be issued only if the court has ordered the deposition or the parties have stipulated for a deposition under Rule 21.

Under Rule 22.01, subd. 2, a subpoena must be issued by the clerk. (This changes Minn. Stat. § 357.32 for the issuance of subpoenas by the county attorney for grand jury and criminal cases.)

This rule supersedes Minn. Stat. § 611.06 to the extent the statute is inconsistent with the rule.

Rule 22 applies only to criminal proceedings in Minnesota. Minn. Stat. § 634.06 provides a method for compelling Minnesota residents to testify in criminal cases in other states.

Rule 23. Petty Misdemeanors and Violations Bureaus

Rule 23.01 Definition of Petty Misdemeanor

"Petty misdemeanor" means an offense punishable by a fine of not more than $300 or other amount established by statute as the maximum fine for a petty misdemeanor.

Rule 23.02 Certification as Petty Misdemeanor by Sentence Imposed

A conviction is deemed a petty misdemeanor if the sentence imposed is within petty misdemeanor limits.

Rule 23.03 Violations Bureaus

Subd. 1. Establishment. The district court may establish misdemeanor violations bureaus.

Subd. 2. Fine Schedules.

(1) Uniform Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for statutory petty misdemeanors and for statutory misdemeanors as it selects.

(2) County Fine Schedules. On establishment of a violations bureau, the district court must establish by court rule, for each county, a fine for any misdemeanor that may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is substantially the same as an offense included on the uniform fine schedule, the fine established must be the same.

Subd. 3. Fine Payment. A defendant must be advised in writing before paying a fine to a violations bureau that payment constitutes a plea of guilty to the charge and an admission that the defendant understands and waives the right to:

a. a court or jury trial;
b. counsel;
c. be presumed innocent until proven guilty beyond a reasonable doubt;
d. confront and cross-examine all witnesses; and
e. to remain silent or to testify for the defense.

Subd. 4. Functions of Violations Bureau. The violations bureau must process all citations for misdemeanors included on the county fine schedule, accept all fines payable on such citations at the bureau, set dates for arraignment, accept bail, keep records, and perform other duties as the court directs.

Subd. 5. Procedures of the Violations Bureau. The district court must supervise, and the court administrator must operate, the misdemeanor violations bureaus. The district court must issue rules governing the duties and operation of the bureaus consistent with these rules. The court administrator must assign one or more clerks to perform the duties of the bureaus.

Rule 23.04 Certification as a Petty Misdemeanor in a Particular Case

Before trial, the prosecutor may certify the offense as a petty misdemeanor if the prosecutor does not seek incarceration and seeks a fine at or below the statutory maximum for a petty misdemeanor. Certification takes effect only on approval of the court and consent of the defendant.

Rule 23.05 Procedure in Petty Misdemeanor Cases

Subd. 1. No Right to Jury Trial. No right to a jury trial exists in a misdemeanor charge certified as a petty misdemeanor under Rule 23.04.

Subd. 2. Right to Appointed Counsel. A defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. In these cases the defendant must qualify financially prior to appointment.

Subd. 3. General Procedure. A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt. Except as otherwise provided in Rule 23, the procedure in petty misdemeanor cases must be the same as for misdemeanors punishable by incarceration.

Rule 23.06 Effect of Conviction

A petty misdemeanor is not considered a crime.

Comment—Rule 23

The definition of petty misdemeanor as used in Rule 23 is broader than the definition provided by Minn. Stat. § 609.02, subd. 4a, which refers to a statutory violation punishable only by a fine of not more than the specified amount. Under Rule 23.01, read in conjunction with the definition of "misdemeanor" in Rule 1.04(a), the term "petty misdemeanor" refers also to violations of local ordinances, charter provisions, rules, or regulations.

These rules do not specify any procedures or sanctions for enforcing payment of fines in petty misdemeanor cases. Existing law permits some enforcement methods. The court may delay acceptance of a plea until the defendant has the money to pay the fine. If a defendant is unable to pay a fine when imposed, the court may set a date by which the defendant must either pay the fine or reappear in court. If the fine is not paid by the date set and the defendant does not reappear as ordered to explain why it has not been paid, the court may issue a bench warrant for the defendant's arrest and set bail in the amount of the fine. Any bail collected could then be used under Minn. Stat. § 629.53 to pay the fine. Contempt procedures under Minn. Stat. ch. 588 can also be used to enforce payment of a fine when the defendant has willfully refused payment. An administrative sanction may exist if the defendant has failed to pay a fine imposed upon conviction of violating a law regulating the operation or parking of motor vehicles. In such cases, the commissioner of public safety is required under Minn. Stat. § 171.16, subd. 3, to suspend

the defendant's license for 30 days or until the fine is paid if the court determines that the defendant has the ability to pay the unpaid fine. Similar sanctions for non-traffic offenses might prove effective, but would require legislative action.

Rule 23.02, which deems a conviction a petty misdemeanor if the sentence imposed is within petty misdemeanor limits, is similar to Minn. Stat. § 609.13, which provides for the reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor.

For uniformity in fines imposed for certain misdemeanors throughout the state, see Minn. Stat. § 609.101, subd. 4.

The written advice required by Rule 23.03, subd. 3 may be included upon the citation issued for the offense. This citation may be set forth in the form of an envelope for mailing the fine to the bureau. This rule does not require a defendant to sign a written plea of guilty.

See also Rule 5.04 as to appointment of counsel upon request of the defendant or interested counsel when the prosecution is for a misdemeanor not punishable by incarceration.

Contrary to what is provided in Rule 23.04, Minn. Stat. § 609.131, enacted by the legislature in 1987 (Chapter 329, Section 6), purports to allow the reduction of a misdemeanor to a petty misdemeanor without the consent of the defendant. The Advisory Committee is aware of this statute, but after consideration rejected any change in the Rule. On such matters of procedure the Rules of Criminal Procedure take precedence over statutes to the extent there is any inconsistency. State v. Keith, 325 N.W.2d 641 (Minn. 1982).

Rule 24. Venue

Rule 24.01 Place of Trial

The case must be tried in the county where the offense was committed unless these rules direct otherwise.

Rule 24.02 Venue in Special Cases

Subd. 1. Offense Committed on a Conveyance. When an offense occurs within the state on a conveyance, and doubt exists as to where the offense occurred, the case may be prosecuted in any county through which the conveyance traveled in the course of the trip during which the offense was committed.

Subd. 2. Offenses Committed on County Lines. Offenses committed on or within 1,500 feet (457.2M) of the boundary line between two counties may be alleged in the complaint or indictment to have been committed in either of them, and may be prosecuted in either county.

Subd. 3. Injury or Death in One County from an Act Committed in Another County. If a person commits an act in one county causing injury or death in another county, the offense may be prosecuted in either county. If doubt exists as to where the act, injury, or death occurred, the offense may be prosecuted in any of the counties.

Subd. 4. Prosecution in County Where Injury or Death Occurs. If a person commits an act either within or outside the limits of the state and injury or death results, the offense may be prosecuted in the county of this state where the injury or death occurs, or where the body of the deceased is found.

Subd. 5. Prosecution When Death Occurs Outside State. If a person commits an assault in this state resulting in death outside the state, the homicide may be prosecuted in the county where the assault occurred.

Subd. 6. Kidnapping. Kidnapping may be prosecuted in any county through which the person kidnapped was taken or kept while under confinement or restraint.

Subd. 7. Libel. Publication of a libel contained in a newspaper published in the state may be prosecuted in any county where the paper was published or circulated. A person cannot be prosecuted for publication of the same libel against the same person in more than one county.

Subd. 8. Bringing Stolen Goods Into State. Whoever brings stolen property into the state in violation of Minn. Stat. § 609.525 may be prosecuted in any county into or through which the property was brought.

Subd. 9. Obscene or Harassing Telephone Calls; Wireless or Electronic Communication. Violations of Minn. Stat. § 609.79 may be prosecuted at the place where the call is made or where it is received or, in the case of wireless or electronic communication, where the sender or receiver resides.

Subd. 10. Fair Campaign Practices. Violations of Minn. Stat. § 211B.15 prohibiting corporate contributions to political campaigns may be prosecuted in the county where the payment or contribution was made, where services were rendered, or where money was paid or distributed.

Subd. 11. Series of Offenses Aggregated. When a series of offenses is aggregated under Minn. Stat. § 609.52, subd. 3(5), and the offenses have been committed in more than one county, the case may be prosecuted in any county in which one or more of the offenses occurred.

Subd. 12. Non-Support of Spouse or Child. Violations of Minn. Stat. § 609.375 for non-support of spouse or child may be prosecuted in the county in which the person obligated to pay or entitled to receive support resides, or where the child resides.

Subd. 13. Refusal to Submit to Chemical Test Crime. Violations of Minn. Stat. § 169A.20, subd. 2 for refusal to submit to a chemical test may be prosecuted in the jurisdiction where the arresting officer observed the defendant driving, operating, or in the control of the motor vehicle, or in the jurisdiction where the refusal occurred.

Subd. 14. Contributing to Need for Protection or Services for a Child. Violations of Minn. Stat. § 260C.425 for contributing to need for protection or services for a child, may be prosecuted in the county where the child is found, resides, or where the alleged act occurred.

Subd. 15. Criminal Tax Penalties. If a person commits violations of Minn. Stat. § 289A.63 in more than one county, the person may be prosecuted for all of the violations in any county in which one of the violations occurred.

Subd. 16. Municipalities in More than One County. Offenses occurring within a municipality located in more than one county or district must be prosecuted in the county where the municipality's city hall is located, unless the municipality designates by ordinance some other county or district in which part of the municipality is located.

Subd. 17. Depriving Another of Custodial or Parental Rights. Violations of Minn. Stat. § 609.26 for depriving another of custodial or parental rights may be prosecuted in the county in which the child was taken, concealed, or detained, or the county of lawful residence of the child.

Subd. 18. Child Abuse. A criminal action arising out of an incident of alleged child abuse may be prosecuted in the county where the alleged abuse occurred or the county where the child is found.

Rule 24.03 Change of Venue

Subd. 1. Grounds. The case may be transferred to another county:

a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;
b. For the convenience of parties and witnesses;
c. In the interests of justice;
d. As provided by Rule 25.02 governing prejudicial publicity.

Subd. 2. County to Which Transferred. For the purposes of change of venue under this rule the district referred to in Minn. Const. Art. I, § 6 is the area within the geographical boundaries of the State of Minnesota.

Subd. 3. Time for Motion for Change of Venue. Except as permitted by Rule 25.02, a motion for change of venue must be made at the time prescribed in Rule 10 for making pretrial motions.

Subd. 4. Proceedings on Transfer. If the case is transferred under these rules, all records in the case, or certified copies of them, must be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that the defendant be transported to the sheriff of the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case must be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release, those conditions must be continued on the further condition that the defendant must appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

Comment—Rule 24

By Rule 11.01, Omnibus Hearings may be held in any county in the district court's judicial district in which the offense was committed. Objections to the place of trial are waived unless asserted before commencement of the trial.

Rule 24.02, subd. 16 (Municipalities in More Than One County) is derived from Minn. Stat. § 484.80.

Rule 24.02, subd. 18 (Child Abuse) is derived from Minn. Stat. § 627.15.

Rule 24.03, subd. 1 (Grounds for Change of Venue) permits a change of venue upon motion of the defendant or prosecution, or on the court's initiative upon any of the grounds specified in the rule.

Minn. Const. Art. I, § 6 provides that the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. Under Rule 24.03, subd. 2 (County to Which Transferred), change of venue may be ordered upon any of the specified grounds to any county of the state.

Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity

Rule 25.01 Pretrial Hearings--Motion to Exclude Public

The following rules govern orders excluding the public from any pretrial hearing and restricting access to the orders or to transcripts of the closed proceeding.

Subd. 1. Grounds for Exclusion of Public. Any part of a pretrial hearing may be closed to the public on motion of any party or the court's initiative on the ground that dissemination of evidence or argument presented at the hearing may interfere with an overriding interest, including disclosure of inadmissible evidence and the right to a fair trial.

Subd. 2. Notice to Adverse Counsel. If any party has evidence that may be subject to a closure order, the party must advise opposing counsel and request a closed meeting with counsel and the court.

Subd. 3. Meeting in Closed Court and Notice of Hearing. In closed court, the court must review the evidence that could be the subject of a restrictive order. If the court determines restriction may be appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard on whether the claimed overriding interest justifies closure.

Subd. 4. Hearing. At the hearing, the court must advise all present that evidence exists that may be the subject of a closure order. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.

The court must consider alternatives to closure. The court may order closure of the pretrial hearing only if it finds a substantial likelihood exists that conducting the hearing in open court would interfere with an overriding interest. Any closure must be no broader than necessary to protect the overriding interest.

Subd. 5. Findings. Any order excluding the public from a pretrial hearing must be issued in writing and state the reasons for closure. The order must address any possible alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not present the risk of revealing inadmissible, prejudicial information must be decided on the record in open court.

Subd. 6. Records. If the court closes all or part of a pretrial hearing, a complete record of the non-public proceedings must be made. On request, the record must be transcribed and filed at public expense. The record must be publicly available after trial or disposition of the case. The court may redact or substitute names in the record to protect innocent persons.

Subd. 7. Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

The Court of Appeals must determine whether the party who moved for public exclusion met the burden of justifying exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.

Rule 25.02 Continuance or Change of Venue

This rule governs a motion for continuance or change of venue because of prejudicial publicity.

Subd. 1. How Obtained. A continuance or change of venue may be granted on motion of any party or on the court's initiative.

Subd. 2. Methods of Proof. The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:

(a) Testimony or affidavits from individuals in the community;
(b) Qualified public opinion surveys; or
(c) Other material having probative value.

Testimony or affidavits from individuals in the community must not be required as a condition for granting the motion.

Subd. 3. Standards for Granting the Motion. A motion for continuance or change of venue must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown.

Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion must be determined before the jury is sworn. A motion or reconsideration of a prior denial may be granted even after a jury has been sworn.

Subd. 5. Limitations; Waiver. The court may grant more than one change of venue. The waiver of a jury or the failure to exercise all available peremptory challenges does not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.

Rule 25.03 Restrictive Orders

Subd. 1. Scope. Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04, this rule governs the issuance of any court order restricting public access to public records relating to a criminal proceeding.

Subd. 2. Motion and Notice.

(a) A restrictive order may be issued only on motion and after notice and hearing.
(b) Notice of the hearing must be given in the time and manner and to interested persons, including the news media, as the court may direct. The notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard.

Subd. 3. Hearing.

(a) At the hearing, the moving party has the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 4.
(b) The public and news media have a right to be represented and to present evidence and arguments in support of or in opposition to the motion, and to suggest any alternatives to the restrictive order.
(c) A verbatim record of the hearing must be made.

Subd. 4. Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes that:

(a) Access to public records will present a substantial likelihood of interfering with the fair and impartial administration of justice.

(b) All reasonable alternatives to a restrictive order are inadequate.

A restrictive order must be no broader than necessary to protect against the potential interference with the fair and impartial administration of justice.

Subd. 5. Findings of Fact. The Court must make written findings of the facts and reasons supporting the conclusions on which an order granting or denying the motion is based. If a restrictive order is granted, the order must address possible alternatives to the restrictive order and explain why the alternatives are inadequate.

Subd. 6. Appellate Review.

(a) Anyone aggrieved by an order granting or denying a restrictive order may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

(b) The Court of Appeals must determine whether the moving party met the burden of justifying the restrictive order under the conditions specified in subd. 3. The Court of Appeals may reverse, affirm, or modify the district court's order.

Comment—Rule 25

The Rules of Public Access to Records of the Judicial Branch generally govern access to case records of all judicial courts. However, Rule 4, subd. 1(d) and Rule 4, subd. 2 of those rules provide that the Rules of Criminal Procedure govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records.

Rule 25.01 (Motion to Exclude Public) setting forth the procedure and standard for excluding the public from pretrial hearings is based on Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn.1983). For a defendant an overriding interest includes interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument presented at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39 (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

This rule does not interfere with the power of the court in any pretrial hearing to caution those present that dissemination of certain information by means of public communication may jeopardize the right to a fair trial by an impartial jury.

The procedure in Rule 25.03 is based upon Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn.1983) and Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254 (Minn.1977). Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case.

Possible alternatives to a restrictive order indicated in Rule 25.03, subd. 3(b) are the following:

- *a continuance or change of venue under Rule 25.02;*
- *sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b);*
- *regulation of use of the courtroom under Rule 26.03, subd. 3;*
- *sequestration of jury under Rule 26.03, subd. 5(1);*
- *exclusion of the public from hearings or arguments outside of the presence of the jury under Rule 26.03, subd. 6;*
- *cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subds. 7 and 8;*
- *admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.*

Rule 26. Trial

Rule 26.01 Trial by Jury or by the Court

Subd. 1. Trial by Jury.

(1) Right to Jury Trial.

(a) Offenses Punishable by Incarceration. A defendant has a right to a jury trial for any offense punishable by incarceration. All trials must be in the district court.

(b) Misdemeanors Not Punishable by Incarceration. In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial must be to the court.

(2) Waiver of Trial by Jury.

(a) Waiver on the Issue of Guilt. The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to trial by jury, and after having had an opportunity to consult with counsel.

(b) Waiver on the Issue of an Aggravated Sentence. Where the prosecutor seeks an aggravated sentence, the defendant, with the approval of the court, may waive a jury trial on the facts in support of an aggravated sentence provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to a trial by jury, and after having had an opportunity to consult with counsel.

(c) Waiver Necessitated by Prejudicial Publicity. The defendant must be permitted to waive a jury trial whenever the court determines:

(i) the defendant knowingly and voluntarily waived that right; and

(ii) reason exists to believe that, because of the dissemination of potentially prejudicial material, the waiver must be granted to assure a fair trial.

(3) Withdrawal of Jury-Trial Waiver. The defendant may withdraw the waiver of a jury trial any time before trial begins.

(4) Waiver of Number of Jurors Required by Law. Any time before verdict, the parties, with the approval of the court, may stipulate that the jury consist of a number of jurors fewer than that provided by law. The court must not approve this stipulation unless the defendant, personally in writing or on the record in open court, agrees to trial by a reduced jury after being advised by the court of the right to trial by a jury consisting of the number of jurors provided by law.

(5) Number Required for Verdict. The jury's verdict must be unanimous in all cases.

(6) Waiver of Unanimous Verdict. Any time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors fewer than that required by law or these rules. The court must not approve this stipulation unless the defendant waives this right personally in writing or on the record, after being advised by the court of the right to a verdict on the concurrence of the number of jurors specified by law.

Subd. 2. Trial Without a Jury.

(a) In a case tried without a jury, the court, within 7 days after the completion of the trial, must make a general finding of guilty; not guilty; or if the applicable pleas have been made, a general finding of not guilty by reason of mental illness or deficiency, double jeopardy, or that Minn. Stat. § 609.035 bars the prosecution.

(b) The court, within 7 days after making its general finding in felony and gross misdemeanor cases, must in addition make findings in writing of the essential facts.

(c) In misdemeanor and petty misdemeanor cases, findings must be made within 7 days after the defendant has filed a notice of appeal.

(d) An opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum.

(e) If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.

Subd. 3. Trial on Stipulated Facts.

(a) The defendant and the prosecutor may agree that a determination of defendant's guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based on stipulated facts. Before proceeding, the defendant must acknowledge and personally waive the rights to:

(1) testify at trial;
(2) have the prosecution witnesses testify in open court in the defendant's presence;
(3) question those prosecution witnesses; and
(4) require any favorable witnesses to testify for the defense in court.

(b) The agreement and the waiver must be in writing or be placed on the record.

(c) If the parties use this procedure to determine the issues of the defendant's guilt, and the existence of facts to support an aggravated sentence, the defendant must make a separate waiver of the above-listed rights as to each issue.

(d) On submission of the case on stipulated facts, the court must proceed under subdivision 2 of this rule as in any other trial to the court.

(e) If the court finds the defendant guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.

Subd. 4. Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling.

(a) When the parties agree that the court's ruling on a specified pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary, the following procedure must be used to preserve the issue for appellate review.

(b) The defendant must maintain the plea of not guilty.

(c) The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal.

(d) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), and must also waive the rights specified in Rule 26.01, subdivision 3(a).

(e) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.

(f) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.

(g) The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.

(h) After consideration of the stipulated evidence, the court must make an appropriate finding, and if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

Rule 26.02 Jury Selection

Subd. 1. Jury List. The jury list must be composed of persons randomly selected from a fair cross-section of qualified county residents. The jury must be drawn from the jury list.

Subd. 2. Juror Information.

(1) Prospective Juror List. The court administrator must furnish the parties a list of prospective jurors' names, addresses, and other information, unless the court orders otherwise after a hearing.

(2) Anonymous Jurors. On any party's motion, the court may restrict access to prospective and selected jurors' names, addresses, and other identifying information if a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality.

The court must hold a hearing on the motion and make detailed findings of fact supporting its

decision to restrict access to juror information.

The findings of fact must be made in writing or on the record in open court. If ordered, jurors may be identified by number or other means to protect their identity. The court may restrict access to juror identity as long as necessary to protect the jurors. The court must minimize any prejudice the restriction has on the parties.

(3) Jury Questionnaire. On the request of a party or on its own initiative, the court may order use of a jury questionnaire as a supplement to voir dire. The questionnaire must be approved by the court. The court must tell prospective jurors that if sensitive or embarrassing questions are included on the questionnaire, instead of answering any particular questions in writing they may request an opportunity to address the court in camera, with counsel and the defendant present, concerning their desire that the answers not be public. When a prospective juror asks to address the court in camera, the court must proceed under Rule 26.02, subd. 4(4) and decide whether the particular questions may be answered during oral voir dire with the public excluded. The court must make the completed questionnaires available to counsel.

Subd. 3. Challenge to Panel. Any party may challenge the jury panel if a material departure from law has occurred in drawing or summoning jurors. The challenge must be made in writing and before the court swears in the jury. The challenge must specify grounds. The court must conduct a hearing to determine the sufficiency of the challenge.

Subd. 4. Voir Dire Examination.

(1) Purpose--How Made. The court must allow the parties to conduct voir dire examination to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges. The examination must be open to the public unless otherwise ordered under Rule 26.02, subd. 4(4). The court must begin by identifying the parties and their respective counsel and by outlining the nature of the case. The court must question jurors about their qualifications to serve and may give the preliminary instructions in Rule 26.03, subd. 4. A verbatim record of the voir dire examination must be made at any party's request.

(2) Sequestration of Jurors.

(a) Court's Discretion. The court may order that the examination of each juror take place outside of the presence of other chosen and prospective jurors.

(b) Prejudicial Publicity. Whenever a significant possibility exists of exposure to prejudicial material, the examination of each juror with respect to the juror's exposure must take place outside the presence of other prospective and selected jurors.

(3) Order of Drawing, Examination, and Challenge.

(a) Jury Selection Methods. Three methods exist for selecting a jury:

(i) the preferred method found in paragraph (b), in which the parties make peremptory challenges at the end of voir dire;

(ii) the alternate method found in paragraph (c), in which a party exercises any peremptory challenge after questioning the prospective juror;

(iii) the preferred method for first-degree murder cases found in paragraph (d), in which each party questions the prospective juror out of the hearing of the other prospective and selected jurors.

(b) Preferred Method; Cases Other Than First-Degree Murder.

(i) The court must draw prospective jurors comprising the number of jurors required, the number of peremptory challenges, and the number of alternates.

(ii) The prospective jurors must take their place in the jury box and be sworn in.

(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause must be made, first by the defense and then by the prosecutor.

(v) When the court excuses a prospective juror for cause, another must be drawn so that the number in the jury box remains the same as the number initially called.

(vi) After all challenges for cause have been made, the parties may alternately exercise peremptory challenges, starting with the defendant.

(vii) The jury consists of the remaining panel members in the order they were called.

(c) Alternate Method; Cases Other Than First-Degree Murder.

(i) The court must draw prospective jurors comprising the total of the number of jurors required and the number of alternates.

(ii) The prospective jurors must take their place in the jury box and be sworn in.

(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) On completion of the defendant's examination of a prospective juror, the defendant must be permitted to exercise a challenge for cause or a peremptory challenge.

(v) On completion of the defendant's examination and any challenge of a prospective juror, the prosecutor may examine the prospective juror and may exercise a challenge for cause or a peremptory challenge.

(vi) An excused prospective juror must be replaced by another. The replacement must be examined and challenged after all previously drawn jurors have been examined and challenged.

(viii) This process continues until the number of persons who will constitute the jury, including the alternates, have been selected.

(d) Preferred Method; First-Degree Murder Cases.

(i) The court must direct that one prospective juror at a time be drawn from the jury panel for examination.

(ii) The prospective juror must be sworn in.

(iii) The prospective juror must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) On completion of defendant's examination, the defendant may exercise a challenge for cause or peremptory challenge.

(v) A prospective juror who is not excused after examination by the defendant may be examined by the state. The state may exercise a challenge for cause or peremptory challenge.

(vi) This process must continue until the number of jurors equals the number required plus alternates.

(4) Exclusion of the Public From Voir Dire. In those rare cases where it is necessary, the following rules govern orders excluding the public from any part of voir dire or restricting access to the orders or to transcripts of the closed proceeding.

(a) Advisory. When it appears prospective jurors may be asked sensitive or embarrassing questions during voir dire, the court may on its own initiative or on request of either party, advise the prospective jurors that they may request an opportunity to address the court in camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive or embarrassing questions are asked.

(b) In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera during sensitive or embarrassing questioning, the request must be granted. The hearing must be on the record with counsel and the defendant present.

(c) Standards. In considering the request to exclude the public during voir dire, the court must balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order voir dire closed only if it finds a substantial likelihood that conducting voir dire in open court would interfere with an overriding interest, including the defendant's right to a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. The court must consider alternatives to closure. Any closure must be no broader than necessary to protect the overriding interest.

(d) Refusal to Close Voir Dire. If the court determines no overriding interest exists to justify excluding the public from voir dire, the voir dire must continue in open court on the record.

(e) Closure of Voir Dire. If the court determines that an overriding interest justifies closure of any part of voir dire, that part of voir dire must be conducted in camera on the record with counsel and the defendant present.

(f) Findings of Fact. Any order excluding the public from a part of voir dire must be issued in writing or on the record. The court must set forth the reasons for the order, including findings as to why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open

voir dire. The order must address any possible alternatives to closure and explain why the alternatives are inadequate.

(g) Record. A complete record of the in camera proceedings must be made. On request, the record must be transcribed within a reasonable time and filed with the court administrator. The transcript must be publicly available, but only if disclosure can be accomplished while safeguarding the overriding interests involved. The court may order the transcript or any part of it sealed, the name of a juror withheld, or parts of the transcript excised if the court finds these actions necessary to protect the overriding interest that justified closure.

Subd. 5. Challenge for Cause.

(1) Grounds. A juror may be challenged for cause on these grounds:

1. The juror's state of mind – in reference to the case or to either party – satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.

2. A felony conviction unless the juror's civil rights have been restored.

3. The lack of any qualification prescribed by law.

4. A physical or mental disability that renders the juror incapable of performing the duties of a juror.

5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.

6. Standing as a guardian, ward, attorney, client, employer, employee, landlord, tenant, family member of the defendant, or person alleged to have been injured by the offense, or whose complaint instituted the prosecution.

7. Being a party adverse to the defendant in a civil action, or a party who complained against the defendant, or whom the defendant accused, in a criminal prosecution.

8. Service on the grand jury that found the indictment or an indictment on a related offense.

9. Service on a trial jury that tried another person for the same or a related offense as the pending charge.

10. Service on any jury previously sworn to try the pending charge.

11. Service as a juror in any case involving the defendant.

(2) How and When Exercised. A challenge for cause may be oral and must state grounds. The challenge must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before all the jurors constituting the jury are sworn. If the court sustains a challenge for cause, the juror must be excused.

(3) By Whom Tried. If a party objects to the challenge for cause, the court must determine the

challenge.

Subd. 6. Peremptory Challenges. In cases punishable by life imprisonment the defendant has 15 peremptory challenges and the prosecutor has 9. For any other offense, the defendant has 5 peremptory challenges and the prosecutor has 3. In cases with more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly. The prosecutor's peremptory challenges must be correspondingly increased. All peremptory challenges must be exercised out of the hearing of the jury panel.

Subd. 7. Objections to Peremptory Challenges.

(1) Rule. No party may purposefully discriminate on the basis of race or gender in the exercise of peremptory challenges.

(2) Procedure. Any party, or the court, at any time before the jury is sworn, may object to a peremptory challenge on the ground of purposeful racial or gender discrimination. The objection and all arguments must be made out of the hearing of all prospective or selected jurors. All proceedings on the objection must be on the record. The objection must be determined by the court as promptly as possible, and must be decided before the jury is sworn.

(3) Determination. The trial court must use a three-step process for determining whether a party purposefully discriminated on the basis of race or gender:

(a) First, the party making the objection must make a prima facie showing that the responding party exercised its peremptory challenges on the basis of race or gender. If the court raised the objection, the court must determine, after any hearing it deems appropriate, whether a prima facie showing exists. If no prima facie showing is found, the objection must be overruled.

(b) Second, if the prima facie showing has been made, the responding party must articulate a race- or gender-neutral explanation for exercising the peremptory challenge(s). If the responding party fails to articulate a race- or gender-neutral explanation, the objection must be sustained.

(c) Third, if the court determines that a race- or gender-neutral explanation has been articulated, the objecting party must prove that the explanation is pretextual. If the court initially raised the objection, it must determine, after any hearing it deems appropriate, whether the party exercised the peremptory challenge in a purposefully discriminatory manner on the basis of race or gender. If purposeful discrimination is proved, the objection must be sustained; otherwise the objection must be overruled.

(4) Remedies. If the court overrules the objection, the prospective juror must be excused. If the court sustains the objection, the court must – based upon its determination of what the interests of justice and a fair trial to all parties in the case require – either:

(a) Disallow the discriminatory peremptory challenge and resume jury selection with the challenged prospective juror reinstated on the panel; or

(b) Discharge the entire jury panel and select a new jury from a jury panel not previously associated with the case.

Subd. 8. Order of Challenges. Challenges must be made in the following order:

a. To the panel.

b. To an individual prospective juror for cause, except that under subd. 5(2) a challenge for cause may be made at any time before a jury is sworn.

c. Peremptory challenge to an individual prospective juror.

Subd. 9. Alternate Jurors. The court may impanel alternate jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider its verdict. If a juror becomes unable to serve, an alternate juror must replace that juror. Alternate jurors replace jurors in the order the alternates were drawn. No additional peremptory challenges are allowed for alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial must be declared unless the parties agree under Rule 26.01, subd. 1(4) that the jury consist of a lesser number than that selected for the trial.

Rule 26.03 Procedures During Trial

Subd. 1. Defendant's Presence.

(1) Presence Required. The defendant must be present at arraignment, plea, and for every stage of the trial including:

(a) jury selection;
(b) opening statements;
(c) presentation of evidence;
(d) closing argument;
(e) jury instructions;
(f) any jury questions dealing with evidence or law;
(g) the verdict;
(h) sentencing.

If the defendant is disabled in communication, a qualified interpreter must also be present at each proceeding.

(2) Presence Waived. The trial may proceed to verdict without the defendant's presence if:

1. The defendant is absent without justification after the trial starts; or

2. The defendant, after warning, engages in conduct that justifies expulsion from the courtroom because it disrupts the trial or hearing. But, as an alternative to expulsion, the court may use restraints if necessary to ensure order in the courtroom.

(3) Presence Not Required.

1. Corporations. A corporation may appear by counsel.

2. Felony and Gross Misdemeanors. In felony and gross misdemeanor cases, the court may, on the defendant's motion, excuse the defendant's presence except at arraignment, plea, trial, and sentencing.

3. Misdemeanors. In misdemeanor cases, if the defendant consents either in writing or on the record, the court must excuse the defendant from appearing for arraignment or plea, and the court may excuse the defendant from appearing at trial or sentencing.

4. ITV or Telephone. If a defendant consents, the court may allow the parties, lawyers, or the court to appear using ITV or telephone in any proceeding where the defendant could waive appearance under these rules.

Subd. 2. Custody and Restraint of Defendants and Witnesses.

a. During trial, the defendant must be seated to permit effective consultation with defense counsel and to see and hear the proceedings.

b. During trial, an incarcerated defendant or witness must not appear in court in the distinctive attire of a prisoner.

c. Defendants and witnesses must not be subjected to physical restraint while in court unless the court:

1. Finds the restraint necessary to maintain order or security; and

2. States the reasons for the restraints on the record outside the hearing of the jury.

d. If the restraint is apparent to the jury, and the defendant requests, the judge must instruct the jury that the restraint must not be considered in reaching the verdict.

Subd. 3. Media Access and Courtroom Decorum.

(a) The court must ensure the preservation of decorum in the courtroom.

(b) The court may reserve seats in the courtroom for reporters.

(c) The court may advise reporters about the proper use of the courtroom and other court facilities, or about courtroom decorum.

Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements, the court may instruct the jury on the parties' respective claims and on other matters that will aid the jury in comprehending the order of trial and trial procedures. Preliminary instructions may include the:

(a) burden of proof;
(b) presumption of innocence;
(c) necessity of proof of guilt beyond a reasonable doubt;
(d) factors the jury may consider in weighing testimony or determining credibility of witnesses;
(e) rules applicable to opinion evidence;
(f) elements of the offense;
(g) other rules of law essential to the proper understanding of the evidence.

The preliminary instructions must be disclosed to the parties before they are given, and any party may object to specific instructions or propose other instructions.

Subd. 5. Jury Sequestration.

(1) Discretion of the Court. From the time the jurors are sworn until they retire for deliberation, the court may permit them and any alternate jurors to separate during recesses and adjournments, or direct that they remain together continuously under the supervision of designated officers.

(2) On Motion. Any party may move for sequestration of the jury at the beginning of trial or at any time during trial. Sequestration must be ordered if the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the jurors' attention. Whenever sequestration is ordered, the court in advising the jury of the decision must not disclose which party requested sequestration.

(3) During Deliberations. With the consent of the defendant and the prosecution, the court may allow the jurors to separate over night during deliberation.

(4) No Outside Contact. The supervising officers must not communicate with any juror concerning any subject connected with the trial, nor permit any other person to do so, and must return the jury to the courtroom as ordered by the court.

Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules govern orders restricting public access to portions of the trial conducted outside the presence of the jury or restricting access to trial transcripts, or an order arising from a closed portion of the trial.

(1) Grounds for Exclusion of Public.

(a) If the jury is not sequestered, on motion of a party or the court's own motion, the court may order that the public be excluded from portions of the trial held outside the jury's presence if the court finds that public dissemination of evidence or argument at the hearing would likely interfere with an overriding interest, including the right to a fair trial.

(b) Alternative Measures. Before restricting public access, the court must consider reasonable alternatives to restricting public access. The restriction must be no broader than necessary to protect the overriding interest involved, including the right to a fair trial.

(2) Notice. If any party wishes to bring a motion excluding the public, the party must request a closed meeting with counsel and the court.

(3) Closed Hearing and Public Notice. At the closed hearing, the court must review the evidence sought to be excluded from public access. If the court finds restriction appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing. The notice must allow the public, including reporters, an opportunity to be heard on whether any overriding interests exist, including the right to a fair trial, that would justify closing the hearing to the public.

(4) Hearing. At the hearing the court must disclose that evidence exists that may justify restricting access. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.

(5) Findings. An order and supporting findings of fact restricting public access must be in writing. The order must address alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not endanger the overriding interests involved, including

the right to a fair trial, must be decided on the record in open court.

(6) Records. If the court closes a portion of the trial, a record of the non-public proceedings must be made. If anyone makes a request, the record must be transcribed at public expense. The record must be publicly available after the trial. The court may redact names from the record to protect the innocent.

(7) Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

The Court of Appeals must determine whether the party who moved for public exclusion met the burden justifying the exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.

Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees. The court may order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for public dissemination during the trial.

Subd. 8. Sequestration. The court may sequester witnesses from the courtroom before their appearance.

Subd. 9. Admonitions to Jurors. The court may advise the jurors not to read, listen to, or watch news reports about the case.

Subd. 10. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If the court determines that material disseminated outside the trial proceedings raises questions of possible prejudice, the court may on its initiative, and must on motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination must take place in the presence of counsel, and a record of the examination must be made.

Subd. 11. View by Jury.

a. The court may allow the jury to view a place relevant to a case at any time before closing arguments if doing so would be helpful to the jury in deciding a material factual issue.

b. At the viewing:

(1) The jury must be kept together under the supervision of an officer appointed by the court;
(2) The judge and the court reporter must be present;
(3) The prosecutor, defendant and defense attorney have the right to be present; and
(4) Others may be present if authorized by the court.

c. The purpose of the viewing is limited to visual observation of the place in question, and neither the parties, nor counsel or the jurors while viewing the place may discuss the significance or implications of anything under observation or any issue in the case.

Subd. 12. Order of Jury Trial.

a. The jury is selected and sworn.

b. The court may deliver preliminary jury instructions.

c. The prosecutor may make an opening statement limited to the facts the prosecutor expects to prove.

d. The defendant may make an opening statement after the prosecutor's opening statement, or make an opening statement at the beginning of the defendant's case. The defendant's statement must be limited to the defense and the facts the defendant expects to offer supporting that defense.

e. The prosecutor presents evidence in support of the state's case.

f. The defendant may offer evidence in defense.

g. The prosecutor may rebut the defense evidence, and, the defense may rebut the prosecutor's evidence. In the interests of justice, the court may allow any party to reopen that party's case to offer additional evidence.

h. The prosecutor may make a closing argument.

i. The defendant may make a closing argument.

j. The prosecutor may make a rebuttal argument limited to a direct response to the defendant's closing argument.

k. On motion, the court may allow a defense rebuttal if the court finds the prosecution has made a misstatement of law or fact or an inflammatory or prejudicial statement in rebuttal. Rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

l. Outside the jury's presence, the court must allow the parties to object to the other party's argument and request curative instructions. The parties may also object and seek curative instructions before or during argument.

m. The court instructs the jury.

n. The jury deliberates and, if possible, renders a verdict.

Subd. 13. Note Taking. Jurors may take notes during the presentation of evidence and use them during deliberation.

Subd. 14. Substitution of Judge.

(1) Before or During Trial. If a judge is unable to preside over pretrial or trial proceedings due to death, illness, or other disability, any other judge in the district, once familiar with the record, may finish the proceedings or trial.

(2) After Verdict or Finding of Guilt. If a judge is unable to preside due to death, illness or other disability after verdict or finding of guilt, any other judge in the district may finish the proceedings. If the subsequent judge determines the proceedings cannot be finished because the judge did not preside at the trial, the judge may order a new trial.

(3) Interest or Bias of Judge. A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause must be heard and

determined by the chief judge of the district or by the assistant chief judge if the chief judge is the subject of the request.

(4) Notice to Remove. A party may remove a judge assigned to preside at a trial or hearing as follows:

(a) A notice to remove must be served on the opposing counsel and filed with district court within 7 days after the party receives notice of the name of the presiding judge at the trial or hearing;

(b) The notice must be filed before the start of the trial or hearing; and

(c) The notice is not effective against a judge who already presided at the trial, Omnibus Hearing, or evidentiary hearing if the removing party had notice the judge would preside at the hearing.

(5) After a party removes a judge under subdivision 14(4) that party may remove a subsequent judge only for cause.

(6) Recusal. The court may recuse itself from presiding over a case without a motion.

(7) Assignment of New Judge. If a judge is unavailable for any reason under this rule, the chief judge of the judicial district must assign another judge within the district to hear the matter. If no other judge in the district is available, the chief judge must notify the chief justice. The chief justice must assign a judge of another district to preside over the matter.

Subd. 15. Objections. An objection to a court order or ruling is preserved for appeal if the party indicates on the record its objection or position. If no opportunity existed to object or indicate a position, the absence of an objection or stated position does not prejudice the party.

Subd. 16. Evidence. At trial, witness testimony must be taken in open court, unless these rules provide otherwise.

Jurors may not submit questions to a witness directly or through the judge or attorneys.

If either party offers an audio or video recording, that party may offer a transcript of the recording, which will be part of the record.

Subd. 17. Interpreters. The court must appoint and compensate interpreters as provided under Rule 8 of the General Rules of Practice for District Courts. Interpreters may be appointed and be present during deliberations for a juror with a sensory disability.

Subd. 18. Motion for Judgment of Acquittal or Insufficient Evidence for an Aggravated Sentence.

(1) Before Deliberations.

(a) Charged Offense. At the close of evidence for either party, the defendant may move for, or the court on its own may order, a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction.

(b) Aggravated Sentence. The defendant may move for, or the court on its own may order, that any aggravating factors be withdrawn from consideration by the jury if the evidence is insufficient to

prove them.

(2) Reservation of Decision. If the defendant's motion is made at the close of the prosecution's case, the court must rule on the motion. If the defendant's motion is made at the close of the defendant's case, the court may reserve ruling on the motion, submit the case to the jury, and rule before or after verdict. If the court grants the defendant's motion after a verdict of guilty, the court must make a written finding stating the reason for the order.

(3) After Verdict or Discharge.

(a) If the jury returns a verdict of guilty or is discharged without verdict, a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged or within any further time as the court may fix during the 15-day period.

(b) If the jury finds aggravating factors, the defendant may move the court to determine that the evidence is insufficient to sustain them.

(c) If the court grants the defendant's motion for a judgment of acquittal or determines that the evidence is insufficient to sustain the aggravating factors, the court must make written findings stating the reasons for the order.

(d) If no verdict is returned, the court may enter judgment of acquittal. If no finding of an aggravating factor is made, the court may enter a finding of insufficient evidence to support an aggravated sentence.

(e) A motion for a judgment of acquittal or that the evidence is insufficient to sustain an aggravated sentence is not barred by a failure to move before deliberations.

Subd. 19. Instructions.

(1) Requests for Instructions. Any party may request specific jury instructions at or before the close of evidence. The request must be provided to all parties.

(2) Proposed Instructions. The court may, and on request must, tell the parties on the record before the arguments to the jury what instructions will be given to the jury including a ruling on the requests made by any party.

(3) In Argument. Any party may refer to the instructions during final argument.

(4) Objections.

(a) No party may claim error for any instruction not objected to before deliberation.

(b) The party's objection must state specific grounds.

(c) The court must give the parties the opportunity to object outside the jury's presence.

(d) The objection must be made on the record.

(e) All instructions, given or refused, must be made a part of the record.

(f) Objections to instructions claiming error in fundamental law or controlling principle may be included in a motion for a new trial even if not raised before deliberations.

(5) Giving of Instructions. The court may instruct the jury before or after argument. Preliminary instructions need not be repeated. The instructions may be in writing and may be taken into the jury room during deliberations.

(6) Contents of Instructions. The court must instruct the jury on all matters of law necessary to render a verdict and must instruct the jury that they are the exclusive judges of the facts. The court must not comment on evidence or witness credibility, but may state the respective claims of the parties.

(7) Verdict Forms. The court must submit appropriate verdict forms to the jury. An aggravated sentence form must be in the form of a special interrogatory.

Subd. 20. Jury Deliberations and Verdict.

(1) Materials Allowed in Jury Room. The court must permit received exhibits or copies, except depositions, into the jury room. The court may permit a copy of jury instructions into the jury room.

(2) Requests to Review Evidence. The court may allow the jury to review specific evidence.

(a) If the jury requests review of specific evidence during deliberations, the court may permit review of that evidence after notice to the parties.

(b) The court need not submit evidence beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence.

(3) Additional Instructions. If the jury asks for additional instruction on the law during deliberation, the court must give notice to the parties. The court's response must be given in the courtroom.

(a) The court may give additional instructions.

(b) The court may reread portions of the original instructions.

(c) The court may tell the jury that the request deals with matters not in evidence or not related to the law of the case.

(d) The court may tell the jury that the request is a factual matter that the jury, not the judge, must determine.

(e) The court need not give instructions beyond the jury's request, but may do so to avoid giving undue prominence to the requested instructions.

(f) The court may give additional instructions without a jury request during deliberations. The court must give notice to the parties of its intent to give additional instructions.

(4) Deadlocked Jury. The jury may be discharged without a verdict if the court finds there is no reasonable probability of agreement.

(5) Polling the Jury.

(a) When a verdict is returned, or the jury answered special interrogatories related to an aggravated sentence, and before the jury is discharged, either party may request that the jury be polled. The court must poll the jury on request. The court may poll the jury on its own initiative.

(b) The poll must be done by the court or the court's clerk. Each juror must be asked individually whether the announced verdict or finding is that juror's verdict or finding.

(c) If a juror indicates the announced verdict or finding is not that juror's verdict or finding, the court may return the jury to deliberations or discharge the jury.

(6) Verdict Impeachment. A defendant may move the court for a hearing to impeach the verdict. Juror affidavits are not admissible to impeach a verdict. At an impeachment hearing, jurors must be examined under oath and their testimony recorded. Minnesota Rule of Evidence 606(b) governs the admissibility of evidence at an impeachment hearing.

(7) Partial Verdicts. The court may accept a partial verdict if the jury has reached a verdict on fewer than all of the charges and is unable to reach a verdict on the rest.

Rule 26.04 Post-Verdict Motions

Subd. 1. New Trial On Defendant's Motion.

(1) Grounds. The court may – on written motion of a defendant – grant a new trial on the issue of guilt or the existence of facts to support an aggravated sentence, or both, on any of the following grounds:

1. The interests of justice;

2. Irregularity in the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial;

3. Prosecutorial or jury misconduct;

4. Accident or surprise that could not have been prevented by ordinary prudence;

5. Newly discovered material evidence, which with reasonable diligence could not have been found and produced at the trial;

6. Errors of law at trial, and objected to at the time unless no objection is required by these rules;

7. A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.

(2) Basis of Motion. A motion for new trial must be based on the record. Pertinent facts that are not in the record may be submitted by affidavit, except as otherwise provided by these rules. A full or partial transcript or other verbatim recording of the testimony taken at trial may be used during the motion hearing.

(3) Time for Motion. Notice of a motion for a new trial must be served within 15 days after a verdict or finding of guilty. The motion must be heard within 30 days after the verdict or finding of guilty, unless the time for hearing is extended by the court for good cause within the 30-day period.

(4) Time for Serving Affidavits. If a motion for a new trial is based on affidavits, the affidavits must be served with the notice of motion. The opposing party will then have 10 days to serve affidavits. The 10-day period may be extended by the court for good cause. The court may permit reply affidavits.

Subd. 2. New Trial on Court's Initiative. The court may – on its own initiative and with the consent of the defendant – order a new trial on any of the grounds specified in subdivision 1(1) within 15 days after a verdict or finding of guilty.

Subd. 3. Motion to Vacate Judgment. The court must – on motion of a defendant – vacate judgment, if entered, and dismiss the case if the indictment, complaint, or tab charge does not charge an offense, or if the court did not have jurisdiction over the offense charged. The motion must be made within 15 days after a verdict or finding of guilty, after a plea of guilty, or within a time set by the court during the 15-day period. If the motion is granted, the court must make written findings specifying its reasons for vacating the judgment and dismissing the case.

Comments

Rule 26.01, subd. 1(1) (Right to Jury Trial). In cases of felonies and gross misdemeanors, the defendant has the right to a jury trial under Minn. Const. Art. 1, § 6, which guarantees the right to jury trial in "all criminal prosecutions." The term "criminal prosecution" includes prosecutions for all crimes defined by Minn. Stat. § 609.02. See Peterson v. Peterson, 278 Minn. 275, 281, 153 N.W.2d 825, 830 (1967); State v. Ketterer, 248 Minn. 173, 176, 79 N.W.2d 136, 139 (1956). The defendant's right to jury trial for offenses punishable by more than six months imprisonment is also guaranteed by the Fourteenth and Sixth Amendments to the United States Constitution. Duncan v. Louisiana, 391 U.S. 145, 159 (1968); Baldwin v. New York, 399 U.S. 66, 69 (1970).

Since misdemeanors in Minnesota are punishable by no more than 90 days of incarceration or a fine or both, Minn. Stat. § 609.03, subd. 3, no federal constitutional right exists to a jury trial on a misdemeanor. However, a state constitutional right to a jury trial exists in any prosecution for the violation of a misdemeanor statute punishable by incarceration. See Minn. Const. Art. 1, § 6 as interpreted in State v. Hoben, 256 Minn. 436, 444, 98 N.W.2d 813, 819 (1959).

Rule 26.01, subd. 1(2)(b) establishes the procedure for waiver of a jury on the issue of an aggravated sentence. See generally Blakely v. Washington, 542 U.S. 296 (2004) and State v. Shattuck, 704 N.W.2d 131 (Minn. 2005) as to the constitutional limitations on imposing aggravated sentences based on findings of fact beyond the elements of the offense and the conviction history. Also, see Rules 1.04 (d), 7.03, and 11.04, subd. 2 and the comments to those rules. Whether a defendant has waived or demanded a jury trial on the issue of guilt, that defendant may still have a jury trial on the issue of an aggravated sentence, and a valid waiver under Rule 26.01, subd. 1(2)(b) must be made before an aggravated sentence may be imposed based on findings not made by jury trial.

Rule 26.01, subd. 1(3) (Withdrawal of Jury-Trial Waiver) provides that waiver of jury trial may be withdrawn before commencement of trial. Trial begins when jeopardy attaches.

The rules do not permit conditional pleas of guilty by which the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. Rule 26.01, subd. 4 implements the procedure authorized by State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980). This rule supersedes Lothenbach as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling.

This rule also distinguishes the Lothenbach-type procedure it implements from Rule 26.01, subd. 3

(Trial on Stipulated Facts). Rule 26.01, subd. 3 should be used if there is no pretrial ruling dispositive of the case, and if the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence. See State v. Busse, 644 N.W.2d 79, 89 (Minn. 2002).

The phrase in the first sentence of Rule 26.01, subd. 4(a) – "or that the ruling makes a contested trial unnecessary" – recognizes that a pretrial ruling will not always be dispositive of the entire case, but that a successful appeal of the pretrial issue could nonetheless make a trial unnecessary, such as in a DWI case where the only issue is the validity of one or more qualified prior impaired driving incidents as a charge enhancement. See, e.g., State v. Sandmoen, 390 N.W.2d 419, 423 (Minn. App. 1986). The parties could agree that if the defendant prevailed on appeal, the defendant would still have a conviction for an unenhanced DWI offense. Where a conviction for some offense is supportable regardless of the outcome of the appeal, but a contested trial would serve no purpose, Rule 26.01, subd. 4 could be used.

On a finding under Rule 26.02, subd. 2(2) that there is strong reason to believe dissemination of juror information poses a threat to juror safety or impartiality, the court may enter an order that information regarding identity, including names, telephone numbers, and addresses of prospective jurors be withheld from the public, parties, and counsel. See State v. Bowles, 530 N.W.2d 521, 530-31 (Minn. 1995); State v. McKenzie, 532 N.W.2d 210, 219 (Minn. 1995). The restrictions ordered by the court may extend through trial and beyond as necessary to protect the safety and impartiality interests involved. To protect the identity of jurors and prospective jurors, the court may order that they be identified by number or other method and may prohibit pictures or sketches in the courtroom. The court's decision will be reviewed under an abuse of discretion standard.

The court must recognize that not every trial where there is a threat to jurors' impartiality will require restriction on access to information about jurors. The decision to restrict access to information on jurors must be made in the light of reason, principle, and common sense.

In ensuring that restriction on the parties' access to information about the jurors does not have a prejudicial effect on the defendant, the court must take reasonable precautions to minimize the potential for prejudice. The court must allow voir dire on the effect that restricting access to juror identification may have on the impartiality of the jurors. The court should also instruct the jurors that the jury selection procedures do not in any way suggest the defendant's guilt.

The use of a written jury questionnaire (Rule 26.02, subd. 2(3)) has proved to be a useful tool in obtaining information from prospective jurors in criminal cases. The written questionnaire provided in the Criminal Forms following these rules includes generally non-sensitive questions relevant to jury selection in any criminal case. See Form 50 for the Jury Questionnaire. Additionally the court on its own initiative or on request of counsel may submit to the prospective jurors as part of the questionnaire other questions that might be helpful based on the particular case to be tried.

Once the panel of prospective jurors for a particular case has been determined, the judge or court personnel will instruct the panel on the use of the questionnaire. The preamble at the beginning of the Jury Questionnaire (Form 50) provides the basic information to the prospective jurors including their right to ask the court to permit them to answer any sensitive question orally or privately. On completion of the questionnaire, the court must make the questionnaire available to counsel for use in the jury selection process. The questionnaire may be sworn to either when signed or when the prospective juror appears in court at the time of the voir dire examination. Because of the information contained in the questionnaire, counsel will not need to expend court time on this information, but can move directly to follow-up questions on particular information already available in the questionnaire. However, the written questionnaire is intended only to supplement and not to substitute for the oral voir dire examination provided for by Rule 26.02, subd. 4.

The use and retention of jury questionnaires have been subject to a variety of practices. This rule provides that the questionnaire is a part of the jury selection process and part of the record for appeal and reflects current law. As such, the questionnaires should be preserved as part of the court record of the case. See Rule 814 of the General Rules of Practice for the District Courts as to the length of time such records must be retained. Additionally, see Rule 26.02, subd. 2(2) as to restricting public access to the names, addresses, telephone numbers, and other identifying information concerning jurors and prospective jurors when the court determines that an anonymous jury is necessary.

It is recognized that the idea of the privacy of the questionnaire adds to the candor and honesty of the responses of the prospective jurors. However, in light of other applicable laws and the fact that the questionnaire is part of the record in the case, prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case. Rather, the jurors can be told, as reflected in the preamble to the Jury Questionnaire (Form 50), that they can ask the court to permit them to answer sensitive questions orally and privately under Rule 26.02, subd. 4(4). This procedure should minimize the sensitive or embarrassing information in the written questionnaires and consequently the need for sealing or destroying them.

Jury selection is a part of the criminal trial record, which is presumed to be open to the public. Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501, 505 (1984). The use of a jury questionnaire as part of jury selection is also a part of the open proceeding and therefore the public and the media have a right of access to that information in the usual case. See, e.g., Lesher Commc'ns, Inc. v. Superior Court of Contra Costa County, 224 Cal. App. 3d 774, 779 (1990).

The provision of Rule 26.02, subd. 4(1) governing the purpose for which voir dire examination must be conducted and the provision for initiation of the examination by the judge is taken from ABA Standards, Trial by Jury, 2.4. The court has the right and the duty to assure that the inquiries by the parties during the voir dire examination are "reasonable". The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper. See State v. Greer, 635 N.W.2d 82, 87 (Minn. 2001) (holding no error in district court's restrictions on voir dire); State v. Bauer, 189 Minn. 280, 282, 249 N.W. 40, 41 (1933). However, the Minnesota Supreme Court's Task Force on Racial Bias in the Judicial System recommends in its Final Report, dated May 1993, that during voir dire lawyers should be given ample opportunity to inquire of jurors as to racial bias.

The purpose of Rule 26.02, subd. 4(3) is to achieve uniformity in the order of drawing, examination, and challenge of jurors, and also to provide a limited number of alternatives that may be followed, in the court's discretion. Hence, a uniform rule (26.02, subd. 4(3)(b)) is prescribed, which is to be followed unless the court orders the alternative. Rule 26.02, subd. 4(3)(c). An exception is that in cases of first degree murder, Rule 26.02, subd. 4(3)(d) is to be preferred unless otherwise ordered by the court.

Rule 26.02, subd. 4(3)(b) is the rule to be followed unless the court orders otherwise and substantially adopts the method used in civil cases, so that in a criminal case 20 members of the jury panel are first drawn for a 12-person jury. See Minn. Stat. § 546.10; Minn. R. Civ. P. 48. After each party has exercised challenges for cause, commencing with the defendant, they exercise their peremptory challenges alternately, commencing with the defendant. If all peremptory challenges are not exercised, the jury must be selected from the remaining prospective jurors in the order in which they were called.

For the definition of a felony conviction that would disqualify a person from service on the jury under Rule 26.02, subd. 5(1), see Minn. Stat. § 609.13. The term "related offense" in the rule is intended to be more comprehensive than the conduct or behavioral incident covered by Minn. Stat. § 609.035.

Rule 26.02, subd. 7 (Objections to Peremptory Challenges) adopts and implements the equal protection prohibition against purposeful racial and gender discrimination in the exercise of peremptory challenges established in Batson v. Kentucky, 476 U.S. 79 (1986) and subsequent cases, including J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994) (extending the rule to gender-based discrimination). In applying this rule, the bench and bar should thoroughly familiarize themselves with the case law that has developed, particularly with respect to meanings of the terms "prima facie showing," "race-neutral explanation," "pretextual reasons," and "purposeful discrimination" used in the rule. See also State v. Davis, 504 N.W.2d 767 (Minn. 1993) (declining to extend the rule to religion), cert. denied sub. nom Davis v. Minnesota, 511 U.S. 1115 (1994).

The interpreter requirement in Rule 26.03, subd. 1(1) derives from Rule 8 of the General Rules of Practice for the District Courts and Minn. Stat. §§ 611.30- 611.34.

A defendant's refusal to wear non-jail attire waives the provision in Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses) and is not grounds for delaying the trial. A list of factors relevant to the decision to employ restraints is found in State v. Shoen, 578 N.W.2d 708, 713 (Minn. 1998).

Rule 26.03, subd. 5(3) requires the consent of the defendant and prosecutor when ordering jurors to separate overnight during deliberation. In State v. Green, 719 N.W.2d 664, 672-73 (Minn. 2006), the Minnesota Supreme Court concluded that a district court did not commit error in releasing jurors for the night when no hotel accommodations could be found within a reasonable distance of the courthouse despite an exhaustive effort, neither party could propose a means of accomplishing sequestration, and the trial court instructed jurors to have no discussions about the case and to not read newspapers, watch television, or listen to the radio.

Rule 26.03, subd. 6 (Exclusion of Public From Hearings or Arguments Outside the Presence of the Jury) reflects Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550, 559-60 (Minn. 1983), which established similar procedures for excluding the public from pretrial hearings. See the comment to Rule 25.01 concerning those procedures.

Rule 26.03, subd. 12 (Order of Jury Trial) substantially continues the order of trial under existing practice. See Minn. Stat. § 546.11. The order of closing argument, under sections "h," "i," "j," and "k" of this rule reflects a change. The prosecution argues first, then the defense. The prosecution is then automatically entitled to rebuttal argument. However, this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument. Allowance of the rebuttal argument to the prosecution should result in a more efficient and less confusing presentation to the jury. The prosecution will need to address only those defenses actually raised by the defendant rather than guessing, perhaps wrongly, about those defenses. In the event that the prosecution engages in improper rebuttal, paragraph "k" of the rule provides, upon motion, for a limited right of rebuttal to the defendant to address misstatements of law or fact and any inflammatory or prejudicial statements. The court has the inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in earlier arguments. It is the responsibility of the court to ensure that final argument to the jury is kept within proper bounds. ABA Standards for Criminal Justice: Prosecution Function and Defense Function, standards 3-5.8 & 4-7.7 (3d ed. 1993). If the argument is sufficiently improper, the trial judge should intervene, even without objection from opposing counsel. See State v. Salitros, 499 N.W.2d 815, 817 (Minn. 1993); State v. White, 295 Minn. 217, 223, 203 N.W.2d 852, 857 (1973).

Under Rule 26.03, subd. 14, a party is not foreclosed from later serving and filing a notice to remove

a judge who simply presided at an appearance under Rule 5 or Rule 8 in the case. Also under that rule, a judge should disqualify himself or herself "whenever the judge has any doubt as to his or her ability to preside impartially or whenever his or her impartiality reasonably might be questioned." ABA Standards for Criminal Justice: Special Functions of the Trial Judge, standard 6-1.9 (3d ed. 2000).

Rule 26.03, subd. 16 (Evidence) leaves to the Minnesota Rules of Evidence the issues of the admissibility of evidence and the competency of witnesses except as otherwise provided in these rules. As to the use of a deposition at a criminal trial, Rule 21.06 controls rather than the Minnesota Rules of Evidence if there is any conflict between them. See Rule 802 and the comments to Rule 804 in the Minnesota Rules of Evidence. The prohibition in Rule 26.03, subd. 16 against jurors submitting questions to witnesses is taken from State v. Costello, 646 N.W.2d 204, 214 (Minn. 2002).

Rule 26.03, subd. 16 provides that any party offering a videotape or audiotape exhibit may also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.

The provision in Rule 26.03, subd. 17 (Interpreters) allowing qualified interpreters for any juror with a sensory disability to be present in the jury room during deliberations and voting was added to the rule to conform with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. § 12101 et seq. Caselaw holding that the presence of an alternate juror during deliberations is considered to be presumptively prejudicial – e.g., State v. Crandall, 452 N.W.2d 708, 711 (Minn. App. 1990) – would not apply to such qualified interpreters present during deliberations. As to an interpreter's duties of confidentiality and to refrain from public comment, see respectively Canons 5 and 6 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

A defendant is entitled to a jury determination of any facts beyond the elements of the offense or conviction history that might be used to aggravate the sentence. Blakely v. Washington, 542 U.S. 296, 301 (2004); State v. Shattuck, 704 N.W.2d 131, 135 (Minn. 2005). If such a trial is held, Rule 26.03, subd. 18 provides that the defendant may challenge the sufficiency of the evidence presented.

Rule 26.03, subd. 19(7) (Verdict Forms) requires that where aggravated sentence issues are presented to a jury, the court shall submit the issues to the jury by special interrogatory. For a sample form for that purpose see CRIMJIG 8.01 of the Minnesota Criminal Jury Instruction Guide. When that is done, Rule 26.03, subd. 20(5) permits any of the parties to request that the jury be polled as to their answers.

Under Rule 26.03, subd. 20(4) (Deadlocked Jury), the kind of instruction that may be given to a deadlocked jury is left to judicial decision. In State v Buggs, 581 N.W.2d 329, 338 (Minn. 1998), the Supreme Court suggested the risk of error in jury instructions can be significantly reduced if the trial court uses CRIMJIG 3.04 when the jury asks for further instruction.

Rule 26.03, subd. 20(6) (Verdict Impeachment) adopts the procedure outlined in Schwartz v. Minneapolis Suburban Bus Company, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960).

Acceptance of a partial verdict under Rule 26.03, subd. 20(7) (Partial Verdicts) may bar further prosecution of any counts over which the jury has deadlocked. See Minn. Stat. § 609.035, subd.

1.

Rule 27. Sentence and Judgment

Rule 27.01 Conditions of Release

After conviction but before sentencing, the court may continue or alter the terms of release, or the court may confine the defendant. The factors in Rule 6.02, subds. 1 and 2 apply, but the defendant bears the burden of showing the defendant will not flee and is not a danger to others.

Rule 27.02 Presentence Investigation in Misdemeanor Cases

An oral presentence report may be given in misdemeanor cases. If an oral report is given, the parties must be permitted to hear it.

Rule 27.03 Sentencing Proceedings

Subd. 1. Hearings. Sentencing hearings must be held as provided by law:

(A) Misdemeanor and Gross Misdemeanor Hearings. Before the sentencing proceeding in a misdemeanor or gross misdemeanor case:

(1) Either party is permitted to contest any part of an oral presentence investigation. The court may continue the hearing to give the parties this opportunity.

(2) A party must notify the opposing party and the court if the party intends to present evidence to contest any part of the presentence investigation.

(B) Felony Sentencings

(1) Within 3 days of a plea or finding or verdict of guilty in a felony case, the court may:

(a) order a presentence investigation and set a date for its return;
(b) order a mental or physical examination of the defendant;

(2) Within the same 3 days, the court must:

(a) order completion of a sentencing guidelines worksheet;
(b) set a date for sentencing;
(c) order the defendant to appear on the sentencing date.

(3) If the court intends to consider a mitigated departure from the sentencing guidelines, the court must advise the parties. This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.

(4) The presentence investigation report, if ordered, must conform to Minn. Stat. § 609.115, subd. 1, and include a sentencing guidelines worksheet and any other information the court ordered included. The report must be submitted in triplicate.

(5) The court must forward the guidelines worksheet and the nonconfidential portion of the presentence investigation to the parties except as limited by Minn. Stat. § 609.115, subd. 4. The

confidential information section of the presentence investigation need not be forwarded, but counsel for the parties must be told it is available for inspection.

(6) Any party may move for a sentencing hearing after receipt of the presentence investigation and guidelines worksheet.

(a) The motion must be served on the opposing party and filed with the court.

(b) The motion must be served and filed no later than 8 days before the hearing, but if the presentence investigation is received less than 8 days before the sentencing date, then the motion must be served and filed within a reasonable time.

(c) The court may continue a sentencing hearing to accommodate a sentencing motion.

(d) The motion must state the reasons for the hearing, including the portion of the presentence investigation or worksheet being challenged, and include any affidavits or other documents supporting the motion.

(e) Opposing counsel must serve and file a reply no later than 3 days before the sentencing hearing.

(7) At the sentencing hearing:

(a) The contested sentencing motions must be heard.

(b) The parties may raise other sentencing issues.

(c) The court must allow the record to be supplemented with relevant testimony.

(d) The court may make findings of fact and conclusions of law on the record or, if in writing, within 20 days of the hearing.

(e) If the court determines the guidelines worksheet or supplement is wrong, the court may order a corrected worksheet submitted to the sentencing guidelines commission.

(8) The court may impose sentence immediately following the conclusion of the sentencing hearing.

Subd. 2. Defendant's Presence.

(A) The defendant must be present at the sentencing hearing and sentencing, unless excused under Rule 26.03, subd. 1(3).

(B) If the defendant is disabled in communication, a qualified interpreter must be present.

(C) A corporation may be sentenced in the absence of counsel if counsel fails to appear, after notice, at sentencing.

Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court must allow statements from:

(A) the prosecutor, victim, and defense counsel concerning any sentencing issues and a recommended sentence;

(B) persons on behalf of the defendant;

(C) the defendant, personally.

The court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to the parties.

Subd. 4. Sentencing. When pronouncing sentence the court must:

(A) State precisely the terms of the sentence.

(B) State the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence.

(C) If the court imposes a departure from the sentencing guidelines, the court must make findings of fact supporting the departure. The grounds for departure must be: (a) stated in the sentencing order; or (b) recorded in the departure report as provided by the sentencing guidelines commission and attached to the sentencing order required under subdivision 7. The sentencing order and any attached departure report must be filed with the commission within 15 days after sentencing.

(D) If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.

(E) If the court stays imposition or execution of sentence:

(1) The court must state the length of the stay.

(2) In felony cases, the court must tell the defendant that noncustodial probation time will not be credited against a future prison term if the stay is revoked.

(3) If lawful conduct could violate the defendant's terms of probation, the court must tell the defendant what that conduct is.

(4) A written copy of the terms of probation must be given to the defendant at sentencing or as soon as possible afterwards.

(5) The court must inform the defendant that if the defendant disagrees with the probation agent concerning the terms and conditions of probation, the defendant may return to court for clarification.

Subd. 5. Right of Appeal. After sentencing, the court must tell the defendant of the right to appeal both the conviction and sentence, and, if eligible, of the right to appeal at state expense by contacting the state public defender.

Subd. 6. Record. A verbatim record must be made of the sentencing proceedings. If either party requests a transcript, it must be prepared within 30 days of a written request. The party requesting the transcript must pay for it and must make satisfactory arrangements for payment.

Subd. 7. Sentencing Order. The court must issue a sentencing order for any counts for which the offense level before sentencing was a felony or gross misdemeanor. This order must contain:

(1) the defendant's name;
(2) the case number;
(3) for each count:

(a) if the defendant pled guilty or was found guilty:

i. the offense date;
ii. the statute violated;
iii. the terms of the sentence as outlined in subdivision 4;
iv. the level of sentence;
v. any restitution ordered, and whether it is joint and several with others;

(b) if the defendant did not plead guilty or was not found guilty, whether the defendant was acquitted or the count was dismissed;

(4) any fine, court costs, library fee, treatment evaluation cost or other financial charge; and

(5) the judge's signature.

The sentencing order must be provided in place of the transcript required by Minn. Stat. §§ 243.49 and 631.41.

Subd. 8. Judgment. The record of a judgment of conviction must contain the plea, verdict, adjudication of guilt, and sentence. If a defendant is found not guilty or is otherwise discharged, judgment must be entered accordingly. A sentence or stay of imposition of sentence is an adjudication of guilt.

Subd. 9. Correction or Reduction of Sentence. The court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement.

Subd. 10. Clerical Mistakes. Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.

Rule 27.04. Probation Revocation

Subd. 1. Initiation of Proceedings.

(1) Warrant or Summons.

(a) Probation revocation proceedings must be initiated by a summons or warrant based on a written report showing probable cause to believe a probationer violated probation.

(b) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another. If the probationer fails to appear on the summons, the court may issue a warrant.

(2) Contents. The warrant or summons must include:

(a) the name of the probationer;
(b) a description of the sentence and the probationary terms allegedly violated;
(c) the judge's signature;
(d) a factual statement supporting probable cause to believe the probationer violated the terms of probation;
(e) the amount of bail or other conditions of release the court may set on the warrant;
(f) for a warrant, an order directing that the probationer be brought before the court promptly, and in any event not later than 36 hours after arrest, not including the day of arrest.
(g) for a summons, an order directing the probationer to appear at a specific date, time, and place.

(3) Execution, Service, Certification of Warrant or Summons. Execution, service, and certification of the warrant or summons are as provided in Rule 3.03.

Subd. 2. First Appearance.

(1) When the probationer initially appears on the warrant or summons the court must:

(a) Appoint an interpreter if the probationer is disabled in communication.
(b) Give the probationer a copy of the violation report, if not already provided.
(c) Tell the probationer of the right to:

a. a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;

b. a revocation hearing to determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked;

c. disclosure of all evidence used to support revocation and of official records relevant to revocation;

d. present evidence, subpoena witnesses, and call and cross-examine witnesses, except the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists;

e. present mitigating evidence or other reasons why the violation, if proved, should not result in revocation;

f. appeal any decision to revoke probation.

(2) Appointment of Counsel. Rule 5.04 governs the appointment of counsel for a probationer unable to afford counsel.

(3) Conditions of Release.

(a) A probationer may be released pending the revocation hearing.
(b) The conditions of release must consider the factors found in Rule 6.02 and the risk the probationer will flee or pose a danger to any person or the community.
(c) The probationer bears the burden of establishing no risk of flight or danger to any person or the community.

(4) Time of Revocation.

(a) The revocation hearing must be held within a reasonable time.

(b) If the probationer is in custody because of the violation report, the hearing must be within 7 days.

(c) If the violation report alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case.

(5) Record. A verbatim record must be made of the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(1) Procedure. The revocation hearing must be conducted consistent with the rights outlined in subd. 2(1)(c)a-e above.

(2) Findings.

(a) No Violation. If the court finds no violation of the conditions of probation, the proceedings must be dismissed and the probationer continued on probation under the terms previously ordered.

(b) Violation Found. If the court finds or the probationer admits a probation violation, the court may:

(i) continue an existing stay of imposition and order probation as provided in Minn. Stat. § 609.135;

(ii) impose sentence but stay execution and order probation as provided in Minn. Stat. § 609.135;

(iii) impose and execute a sentence;

(iv) continue an existing stay of execution and order probation as provided in Minn. Stat. § 609.135;

(v) execute a sentence.

(3) Record. A verbatim record must be made of the probation revocation hearing. If a contested revocation hearing is held, the court must make written findings of fact, including a summary of the evidence relied on in reaching a revocation decision and the basis for the court's decision.

(4) Appeal.

(a) The defendant or the prosecutor may appeal the revocation decision.

(b) Rule 28.05 governs the appeal, except that if an appellant files a notice of appeal within 90 days of the revocation hearing, the appellant's brief must be identified as a probation revocation brief and must be filed within 30 days after delivery of the transcript.

(c) The Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript.

Rule 27.05. Pretrial Diversion

Subd. 1. Agreements.

(1) A prosecution may be suspended for a specified time and then dismissed under subdivision 6 if:

(a) the agreement is in writing and signed by the parties;
(b) the victim's views are considered;
(c) the court consents;
(d) the court finds a substantial likelihood of conviction and that the benefits of rehabilitation outweigh the harm to society from suspending prosecution.

(2) The agreement must provide that the defendant not commit a new crime or petty misdemeanor and that the defendant waive the right to a speedy trial.

In addition, the agreement may:

(a) include stipulations of fact or of the admissibility of specified testimony, other evidence, and depositions if the diversion agreement is terminated and the case is tried;

(b) provide for any term a court could impose as a condition of probation except the defendant may not be incarcerated as a condition of diversion.

(3) Limitations. The agreement cannot suspend prosecution longer than the period of probation the court could impose if the defendant were convicted. The agreement cannot include a condition the court could not impose as a condition of probation.

Subd. 2. Filing of Agreement; Release. If a diversion agreement is reached, the prosecutor must file the agreement along with a statement suspending the prosecution for a specified time with the court. The defendant must be released when the agreement is filed.

Subd. 3. Modification. The parties, with the court's approval, may agree to modify the terms of the diversion.

Subd. 4. Termination of Agreement and Resumption of Prosecution.

(1) Defendant's Notice. The defendant may terminate the agreement by filing a termination notice with the court. The prosecution will then proceed.

(2) Prosecutor's Motion. The court may terminate the agreement on the prosecutor's motion if the court finds:

a. the defendant or defense counsel misrepresented material facts affecting the agreement and the prosecutor moves to terminate the agreement within 6 months after it commences; or

b. the defendant has committed a material violation of the agreement, and the prosecutor makes the motion no later than 1 month after the suspension period specified in the agreement expires.

(3) Issuance of Warrant or Summons. The court may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit or testimony, finds:

(a) probable cause exists to believe the defendant committed a material violation of the agreement; and
(b) a substantial likelihood exists that the defendant will not appear at a termination hearing.

In lieu of a warrant, the court may issue a summons ordering the defendant to appear.

Subd. 5. Release Status upon Resumption of Prosecution. If the agreement is terminated, the defendant must return to the release status in effect before the agreement, unless the court alters those terms under Rule 6.

Subd. 6. Termination of Agreement and Dismissal of Charges.

(A) Automatic Dismissal. The charges must be dismissed 1 month after the suspension period specified in the agreement expires unless the prosecutor earlier moved to terminate the agreement.

(B) Dismissal of Motion. If the court denies the motion to resume prosecution, and the specified suspension time has elapsed, the charges must be dismissed.

(C) Effect of Dismissal. If the court dismisses the charge under this rule, the defendant cannot be prosecuted for it.

Subd. 7. Termination and Dismissal on a Showing of Rehabilitation. The court may terminate the agreement, dismiss the charges, and prohibit further prosecution if:

(1) a party moves for termination and provides facts supporting it;
(2) the court gives the parties an opportunity to be heard;
(3) the court finds the defendant has not committed any additional offenses; and
(4) the court finds the defendant appears to be rehabilitated.

Subd. 8. Modification or Termination. If the court finds the prosecutor obtained the defendant's agreement to diversion because of a material misrepresentation by the prosecutor or a person covered by Rule 9.01, subd. 1a(1), the court may:

(1) modify the parts of the agreement related to the misrepresentation; or
(2) if justice requires, terminate the agreement and prohibit further prosecution of the charge.

Comment—Rule 27

Minn. Const. Art. I, § 7, provides that all persons before conviction must be bailable by sufficient sureties. The defendant is not entitled to bail as a matter of right after conviction.

If pursuant to Rule 27.02 a presentence report is prepared, the officer conducting the investigation is required by Minn. Stat. § 609.115, subd. 1 and Minn. Stat. § 611A.037 to advise the victim of the crime concerning the victim's rights under those statutes and under Minn. Stat. § 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

The sentencing hearings "as provided by law" under Rule 27.03, subd. 1 would include restitution proceedings under Minn. Stat. §§ 611A.04 and 611A.045.

The Sentencing Guidelines Commission recommends that when the felony being sentenced involves a sexual offense, the trial court should order a physical or mental examination of the offender as a supplement to the presentence investigation permitted by Minn. Stat. § 609.115. Minnesota Sentencing Guidelines and Commentary, Training Material, III. E. Rule 27.03, subd. 1(B) permits the court to order these examinations. This rule does not preclude a post-sentence investigation whenever required by statute (Minn. Stat. § 609.115, subd. 2 (sentence of life imprisonment)) or whenever the court considers one necessary. The presentence investigation may include the information obtained on the pretrial

release investigation under Rule 6.02, subd. 3. If a defendant is convicted of a domestic abuse offense as defined by Minn. Stat. § 609.2244, subd. 1, a presentence domestic abuse investigation must be conducted. A report must then be submitted to the court that meets the requirements in Minn. Stat. § 609.2244, subd. 2.

The Advisory Committee strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet before the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and may later be included with any presentence investigation report required under Rule 27.03, subd. 1.

The date for the return of the presentence investigation report should be set sufficiently in advance of sentencing to allow counsel sufficient time to make any motion under Rule 27.03, subd. 1(B)(6). The officer conducting the presentence investigation is required by Minn. Stat. § 609.115 and Minn. Stat. § 611A.037 to advise any victim of the crime concerning the victim's rights under those statutes and under Minn. Stat. § 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

Rule 27.03, subd. 1(B)(7) is in accord with Minn. Stat. § 244.10, subd. 1, which requires that the court issue written findings of fact, conclusions of law and appropriate order on the issues raised at the sentencing hearing at the conclusion of the hearing or within twenty days afterwards.

In Rule 27.03, subd. 1(B)(8) the term "sentencing hearing" refers to the hearing required by Minn. Stat. § 244.10, subd. 1 on issues of sentencing. In the usual case, actual sentencing should immediately follow.

Minn. Stat. § 611A.06 requires the Commissioner of Corrections or other custodial authority to notify the victim of the crime when an offender is to be released from imprisonment. Minn. Stat. § 611A.0385 further requires that the court or its designee shall at the time of the sentencing make reasonable good faith efforts to inform any identifiable victims of their right to such notice under Minn. Stat. § 611A.06.

Minn. Stat. § 244.10, subd. 2 requires written findings of fact as to the reasons for departure from the sentencing guidelines. The court's statement into the record under Rule 27.03, subd. 4(C), should satisfy this requirement, but the rule further requires that the reasons for departure must be stated in a sentencing order or in a departure report attached to the sentencing order. Whichever document is used, it must be filed with the sentencing guidelines commission within 15 days of the date of the sentencing.

Rule 27.03, subd. 4(D) is designed to eliminate any possible due process notice problems where a defendant does not request a sentencing hearing because of an expectation of receiving a sentence in conformance with the sentencing guidelines. It is also anticipated that fewer sentencing hearings will be requested by the prosecution and defense so long as an opportunity exists to request such a hearing after notice that the court might depart from the guidelines.

Rule 27.03, subd. 4(E) avoids any due process notice problems if the court revokes probation and executes the sentence. Except as provided in Minn. Stat. § 609.135, subd.7, a defendant has a right to refuse probation when the conditions of the probation are more onerous than a prison sentence, State v. Randolph, 316 N.W.2d 508 (Minn.1982).

Rule 27.04 does not require an initial probable cause hearing on the probation violation report. The hearing is not constitutionally required if the defendant is not in custody or if the final revocation hearing is held within the time that the preliminary hearing would otherwise be required. Pearson v. State, 308 Minn. 287, 241 N.W.2d 490 (1976). It is, however, necessary under Rule 27.04, subd. 1(2) that the

defendant be brought before the court after arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.

Rule 27.05 (Pretrial Diversion) does not preclude the prosecutor and defendant from agreeing to diversion of a case without court approval if charges are not pending before the court. The requirement in subd. 1(1) that the prosecutor give "due consideration of the victim's views" is in accord with the requirement in Minn. Stat. § 611A.031 that the prosecuting attorney "make every reasonable effort to notify and seek input from the victim" before employing pretrial diversion for certain specified offenses.

With the approval of the court, the pretrial diversion agreement may provide for any term a court could impose as a condition of probation, including restitution. See Minn. Stat. §§ 611A.04 and 611A.045 as to requiring restitution as part of a sentence.

Under Rule 27.05, subd. 1(3), no condition may be included in the pretrial diversion agreement that could not be imposed upon probation after conviction of the crime charged. See Minn. Stat. § 609.135 as to the permissible conditions of probation. See Minn. Stat. § 611A.031 regarding the prosecutor's duties under the Victim's Rights Act, for certain designated offenses, to make every reasonable effort to notify and seek input before placing a person into a pretrial diversion program.

Rule 28. Appeals to Court of Appeals

Rule 28.01 Scope of Rule

Subd. 1. Appeals from District Court. In misdemeanor, gross misdemeanor, and felony cases, Rule 28 governs the procedure for appeals from the district courts to the Court of Appeals unless the defendant has been convicted of first-degree murder.

Subd. 2. Applicability of Rules of Civil Appellate Procedure. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.

Subd. 3. Suspension of Rules. For good cause, the Court of Appeals may suspend application of any of these rules on its own initiative or on a party's motion, and may order proceedings as it directs, but it may not alter the time for filing the notice of appeal unless permitted by Rule 28.02, subd. 4(3)(g).

Rule 28.02 Appeal by Defendant

Subd. 1. Review by Appeal. A defendant may obtain Court of Appeals review of district court orders and rulings only as these rules permit, or as permitted by the law for the issuance of the extraordinary writs and for the Post-Conviction Remedy. Writs of error are abolished.

Subd. 2. Appeal as of Right.

(1) Final Judgment and Postconviction Appeal. A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. ch. 590. A final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction and imposes or stays a sentence.

(2) Orders. A defendant cannot appeal until the district court enters an adverse final judgment, but may appeal:

(a) from an order refusing or imposing conditions of release; or
(b) in felony and gross misdemeanor cases from an order:

1. granting a new trial, and the defendant claims that the district court should have entered a final judgment in the defendant's favor;
2. not on the defendant's motion, finding the defendant incompetent to stand trial; or
3. denying a motion to dismiss a complaint following a mistrial, and the defendant claims retrial would violate double jeopardy.

(3) Sentences. A defendant may appeal as of right from any sentence imposed or stayed in a felony case. Rule 28.02, subd. 3 governs sentencing appeals in non-felony cases.

Subd. 3. Discretionary Review. In the interests of justice and on petition of the defendant, the Court of Appeals may allow an appeal from an order not otherwise appealable, but not from an order made during trial. The petition must be served and filed within 30 days after entry of the order appealed. Minnesota Rule of Civil Appellate Procedure 105 governs the procedure for the appeal.

Subd. 4. Procedure for Appeals Other than Sentencing Appeals.

(1) Service and Filing. A defendant appeals by filing a notice of appeal with the clerk of the appellate courts with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judge or order appealed from is entered. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case provided for in Minnesota Rule of Civil Appellate Procedure 133.03 unless the appellate court directs otherwise. The defendant does not have to post bond to appeal. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal.

(2) Contents of Notice of Appeal. The notice of appeal must specify:

(a) the party or parties taking the appeal;
(b) the names, addresses, and telephone numbers of all counsel and whom they represent;
(c) the judgment or order from which appeal is taken; and
(d) that the appeal is to the Court of Appeals.

(3) Time for Taking an Appeal.

(a) In felony and gross misdemeanor cases, an appeal by the defendant must be filed within 90 days after final judgment or entry of the order being appealed. Other charges that were joined for prosecution with the felony or gross misdemeanor may be included in the appeal.

(b) In misdemeanor cases, an appeal by the defendant must be filed within 10 days after final judgment or entry of the order being appealed.

(c) In postconviction relief cases, an appeal by the defendant from an order denying a petition for postconviction relief must be filed within 60 days after entry of the order.

(d) A notice of appeal filed after the announcement of a decision or order – but before sentencing or entry of judgment or order – must be treated as filed after, but on the same day as sentencing or entry of judgment.

(e) A timely motion to vacate the judgment, for judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in the appeal from the judgment.

(f) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.

(g) For good cause, the district court or a judge of the Court of Appeals may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.

(4) Stay of Appeal for Postconviction Proceedings. If, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings.

Subd. 5. Proceeding in Forma Pauperis. A defendant who wishes to proceed in forma pauperis under this rule must follow this process:

(1) An indigent defendant wanting to appeal or to obtain postconviction relief must apply to the State Public Defender's office.

(2) The State Public Defender's office must promptly send the applicant a financial inquiry form, preliminary questionnaire form, and other forms as deemed appropriate.

(3) The applicant must completely fill out these forms, sign them, and have his or her signature notarized if indicated.

(4) The applicant must then return these completed documents to the State Public Defender's office for further processing.

(5) The State Public Defender's office must determine if the applicant is financially and otherwise eligible for representation. If the applicant qualifies, then the State Public Defender's office must provide representation in felony cases regarding a judicial review or an evaluation of the merits of a judicial review of the case, and may so represent the applicant in misdemeanor or gross misdemeanor cases.

Upon the administrative determination by the State Public Defender's office that it will represent an applicant for a judicial review or an evaluation of the merits of a judicial review of the case, the office is automatically appointed without order of the court. The State Public Defender's office must notify the applicant of its decision on representation and advise the applicant of any problem relative to the applicant's qualifications to obtain its services. Any applicant who contests a decision of the State Public Defender's office that the applicant does not qualify for representation may apply to the Minnesota Supreme Court for relief.

(6) If the court receives a request for transcripts necessary for judicial review or other efforts to have cases reviewed from a defendant who does not have counsel, the court must refer the request to the State Public Defender's office for processing as in paragraphs (2) through (5) above.

(7) If the court receives a request for transcripts made by an indigent defendant represented by private counsel, the court must submit the request to the State Public Defender's office for processing as follows:

a. The State Public Defender's office must determine financial eligibility of the applicant as in paragraphs (2) through (5) above.

b. If the defendant qualifies financially, he or she may request the State Public Defender to order all parts of the trial transcript necessary for effective appellate review. The State Public Defender's office must order and pay for these transcripts.

c. If a dispute arises about the parts of the trial transcript necessary for effective appellate review, the defendant or the State Public Defender's office may make a motion for resolution of the matter to the appropriate court.

d. The State Public Defender's office must provide the transcript to the indigent defendant's attorney for use in the direct appeal. The attorney must sign a receipt for the transcript agreeing to return it to the State Public Defender's office after the appeal process.

(8) All court administrators must furnish the State Public Defender's office without charge copies of any documents relevant to the case.

(9) All fees – including appeal fees, hearing fees, or filing fees – ordinarily charged by the clerk of the appellate courts or court administrators are waived when the State Public Defender's office, or other public defender's office, represents the defendant. The court must also waive these fees on a sufficient showing by any other attorney that the defendant cannot pay them.

(10) The State Public Defender's office must be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of the county where the prosecution occurred, unless the Supreme Court directs otherwise.

(11) In appeal cases and postconviction cases, the State of Minnesota must bear the cost of transcripts and other necessary expenses from funds available to the State Public Defender's office, if approved by that office, regardless of where the prosecution occurred.

(12) For defendants represented on appeal by the State Public Defender's office, Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2, concerning the certificate as to transcript, does not apply. In these cases, the State Public Defender's office on ordering the transcript must mail a copy of the written request for transcript to the court administrator, the clerk of the appellate courts, and the prosecutor.

The court reporter must promptly acknowledge its receipt and indicate acceptance in writing, with copies to the court administrator, the clerk of the appellate courts, the State Public Defender's office, and the prosecutor. In so doing, the court reporter must state the estimated number of pages of the transcript and the estimated completion date. That date cannot exceed 60 days, but for guilty plea and sentencing transcripts, it cannot exceed 30 days. Upon delivery of the transcript, the reporter must file with the clerk of the appellate courts a certificate evidencing the date and manner of delivery.

(13) A defendant may proceed pro se on appeal only after the State Public Defender's office has first had the opportunity to file a brief on the defendant's behalf. When that office files and serves the brief, it must also provide a copy of the brief to the defendant. If the defendant then chooses to proceed pro se on appeal or to file a supplemental brief, the defendant must so notify the State Public Defender's office.

(14) Upon receiving notice under paragraph (13) that the defendant has chosen to proceed pro se on appeal or to file a supplemental brief, the State Public Defender's office must confer with the defendant

about the reasons for choosing to do so and advise the defendant concerning the consequences of that choice.

(15) To proceed pro se on appeal following consultation, the defendant must sign and return to the State Public Defender's office a detailed waiver of counsel as provided by that office for the particular case.

(16) If the State Public Defender's office believes, after consultation, that the defendant may not be competent to waive counsel it must assist the defendant in seeking an order from the district court determining the defendant's competency or incompetency.

(17) The court must consider the brief filed by the State Public Defender's office on the defendant's behalf. A defendant, whether or not choosing to proceed pro se, may also file with the court a supplemental brief. The supplemental brief must be filed within 30 days after the State Public Defender's office files its initial brief.

(18) If a defendant requests a copy of the transcript, the State Public Defender's office must confer with the defendant concerning the need for the transcript. If the defendant still requests a copy of it, one must be provided to the defendant temporarily.

(19) Upon receiving the transcript, the defendant must sign a receipt for it including an agreement not to make it available to other persons and to return the transcript to the State Public Defender's office when the time to file any supplemental brief expires.

(20) The transcript remains the property of the State Public Defender's office and must be returned upon expiration of the time to file any supplemental brief. Upon return of the transcript, the State Public Defender's office must provide the defendant with a copy of a signed receipt for it. The State Public Defender's office must promptly file the original of the receipt with the clerk of the appellate courts, and until that occurs, the clerk will not accept the supplemental brief for filing.

Subd. 6. Stay. When a defendant files an appeal, this does not stay execution of the judgment or sentence unless a district court judge or a judge of the appellate court grants a stay.

Subd. 7. Release of Defendant.

(1) Conditions of Release. If a defendant appeals, and a court grants a stay, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release and the factors determining the conditions of release, except as provided by this rule. The court must also take into consideration that the defendant may be compelled to serve the sentence imposed before the appellate court decides the case.

(2) Burden of Proof. If a defendant was sentenced to incarceration, a court must not grant release pending appeal from a judgment of conviction unless the defendant establishes to the court's satisfaction that:

(a) the appeal is not frivolous or taken for delay; and
(b) no substantial risk exists that the defendant:

(i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings;
(ii) is likely commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

(3) Application for Release Pending Appeal. A defendant must first apply to the district court for release pending appeal. If the district court denies release pending appeal or imposes conditions of release, the court must state on the record the reasons for the action taken.

If the defendant appeals and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, to the applicable appellate court or to a judge or justice of that court. The motion must be determined promptly upon such papers, affidavits, and portions of the record as the parties may present, and after reasonable notice to the prosecutor. The appellate court or one of its judges or justices may order the defendant's release pending the motion's disposition.

(4) Credit for Time Spent in Custody. All time the defendant spends in custody pending an appeal must be deducted from the sentence the district court imposed.

(5) When a defendant obtains release pending appeal under this rule, the prosecution must make reasonable good faith efforts as soon as possible to advise the victim of the defendant's release.

Subd. 8. Record on Appeal. The record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any.

In lieu of the record as defined by this rule, the parties may – within 60 days after filing of the notice of appeal – prepare, sign, and file with the court administrator a statement of the case showing how the issues presented by the appeal arose and how the district court decided them, stating only the claims and facts essential to a decision. The district court, after making any additions it considers necessary to present the issues raised by the appeal, may approve the statement, which will then be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and any relevant district court memorandum of law must be included with the record.

An appellant who intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without either a statement of the case or transcript, must serve notice of intent to do so on respondent and the court administrator and also file the notice with the clerk of the appellate courts, all within the time provided for ordering a transcript.

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the transcript must be ordered within 30 days after filing of the notice of appeal and may be extended by the appellate court for good cause.

If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the district court record, it becomes part of the record on appeal and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

If the appellant does not order the entire transcript, then within the 30 days permitted to order it, the appellant must file with the clerk of the appellate courts and serve on the court administrator and respondent a description of the parts of the transcript the appellant intends to include in the record, and a statement of the issues the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings necessary, the respondent must order from the reporter, within 10 days of

service of the description or notification of no transcript, those other parts deemed necessary, or serve and file a motion in the district court for an order requiring the appellant to do so.

Subd. 10. Briefs. The appellant must serve and file the appellant's brief within 60 days after the court reporter delivers the transcript, or after the filing of the district court's approval of the statement under subd. 8 of this rule or under Minnesota Rule of Civil Appellate Procedure 110.03. In all other cases, if the parties obtain the transcript before the appeal, or if the record on appeal does not include a transcript, the appellant must serve and file the appellant's brief within 60 days after the appellant filed the notice of appeal. The respondent must serve and file the respondent's brief within 45 days after service of the appellant's brief. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but the appellant's brief must contain a procedural history.

Subd. 11. Scope of Review. On appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests of justice may require.

Subd. 12. Action on Appeal. If the appellate court affirms the judgment, it must direct execution of the sentence as pronounced by the district court or as modified by the appellate court under Rule 28.05, subd. 2. If it reverses the judgment, it must:

(a) direct a new trial;
(b) vacate the conviction and enter a judgment of acquittal; or
(c) reduce the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court reduces the conviction, it must remand for resentencing.

Subd. 13. Oral Argument.

(1) Oral argument must be held in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it when the party serves and files its initial brief, unless:

1. the respondent forfeits oral argument under Minnesota Rule of Civil Appellate Procedure 134.01(b) for failure to timely file a brief, and appellant has either waived oral argument or not requested it;

2. the parties waive oral argument by joint agreement under Minnesota Rule of Civil Appellate Procedure 134.06; or

3. the appellate court determines that oral argument is unnecessary because:

a. the dispositive issue or set of issues has been authoritatively settled; or

b. the briefs and record adequately present the facts and legal arguments, and the decisional process would not be significantly aided by oral argument.

The clerk of the appellate court must notify the parties when oral argument will not be allowed under this provision. Any party so notified may request the court to reconsider its decision by serving on all other parties and filing with the clerk of the appellate courts a written request for reconsideration within 5 days of receipt of the notification that no oral argument will be allowed. If, under this provision, the court does not allow oral argument, the case must be considered as submitted to the court when the clerk of the appellate courts notifies the parties that oral argument has been denied.

The Court of Appeals may direct presentation of oral argument in any case.

(2) Except in exigent circumstances, the oral argument must be heard by the full panel assigned to decide the case, and in any event must be considered and decided by the full panel. The procedure on oral argument, including waiver and forfeiture of oral argument, must be as prescribed by the Minnesota Rules of Civil Appellate Procedure, unless this rule directs otherwise.

Rule 28.03 Certification of Proceedings

In the following circumstances, when any question of law arises that in the district court's opinion is so important or doubtful that the Court of Appeals should decide it, and the defendant requests or consents, the judge must report the case to present the question of law, and certify the report to the Court of Appeals:

(1) at the trial of any person convicted in any court;
(2) upon any motion to dismiss a tab charge, complaint, or indictment; or
(3) upon any motion relating to the tab charge, complaint, or indictment.

Certification stays all proceedings in the district court until the Court of Appeals decides the question presented. The prosecutor must, upon certification of the report, promptly furnish a copy to the Minnesota Attorney General at the expense of the governmental unit responsible for the prosecution.

The court may stay other criminal cases it has pending that involve or depend on the same question, if the defendant so requests or consents to the stay, until the appellate court decides the certified question. Briefs must be filed and served as provided in Rule 28.04, subd. 2(3), unless the appellate court directs otherwise.

Rule 28.04 Appeal by Prosecutor

Subd. 1. Right of Appeal. The prosecutor may appeal as of right to the Court of Appeals:

(1) in any case, from any pretrial order, including probable cause dismissal orders based on questions of law. But a pretrial order cannot be appealed if the court dismissed a complaint for lack of probable cause premised solely on a factual determination, or if the court dismissed a complaint under Minn. Stat. § 631.21;

(2) in felony cases, from any sentence imposed or stayed by the district court;

(3) in any case, from an order granting postconviction relief under Minn. Stat. ch. 590;

(4) in any case, from an order staying adjudication of an offense for which the defendant pleaded guilty or was found guilty at a trial. An order for a stay of adjudication to which the prosecutor did not object is not appealable;

(5) in any case, from a judgment of acquittal by the district court entered after the jury returns a verdict of guilty under Rule 26.03, subd. 18(2) or (3);

(6) in any case, from an order of the district court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 3;

(7) in any case, from an order for a new trial granted under Rule 26.04, subd. 1, after a verdict or judgment of guilty, if the district court expressly stated in its order or in an accompanying memorandum that it based its order exclusively on a question of law that, in the opinion of the district court, is so important or doubtful that the appellate court~~s~~ should decide it. However, an order for a new trial cannot be appealed if based on the interests of justice.

Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecutor is as follows:

(1) Stay. Upon oral notice that the prosecutor intends to appeal a pretrial order, the district court must stay the proceedings for 5 days to allow time to perfect the appeal.

The oral notice must include a statement for the record explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial.

(2) Notice of Appeal. The prosecutor must file with the clerk of the appellate courts:

(a) a notice of appeal;

(b) the statement of the case provided for by Minnesota Rule of Civil Appellate Procedure 133.03, which must also include a summary statement by the prosecutor explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial; and

(c) a copy of the written request to the court reporter for a transcript of the proceedings as appellant deems necessary.

The prosecutor must submit with the notice of appeal, the statement of the case, and request for transcript at the time of filing, proof of service of these documents on the defendant or defense counsel, the State Public Defender's office, the Minnesota Attorney General, and the court administrator.

Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service, does not deprive the Court of Appeals of jurisdiction over the prosecutor's appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal must be as set out in Rule 28.02, subd. 4(2).

(3) Briefs. The prosecutor must file the appellant's brief with the clerk of appellate courts, with proof of service on the respondent, within 15 days of delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request any transcript under Rule 28.04, subd. 2(2), appellant must file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent within 15 days after the prosecutor filed the notice of appeal.

Within 8 days of service of appellant's brief upon respondent, the respondent must file the respondent's brief together with proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history.

(4) Dismissal by the Minnesota Attorney General. In appeals by the prosecutor, the attorney general may, within 20 days after entry of the order staying proceedings, dismiss the appeal, and must within 3 days after the dismissal give notice of it to the court administrator and file it with the clerk of the appellate courts. The district court must then proceed as if no appeal had been taken.

(5) Oral Argument and Consideration. Rule 28.02, subd. 13 concerning oral argument applies to appeals by the prosecutor, but the date of oral argument or submission of the case to the court without oral argument cannot be later than 3 months after all briefs have been filed. The Court of Appeals must not hear or accept as submitted any appeals not argued or submitted before this period elapsed. If the case has not been argued or submitted within 3 months, the district court must proceed as if no appeal had been taken.

(6) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on such appeal, and they must be paid by the governmental unit responsible for the prosecution.

(7) Joinder. The prosecutor may appeal several of the orders under this rule joined in a single appeal.

(8) Time for Appeal. The prosecutor may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and the district court has decided all issues raised.

The appeal then must be taken within 5 days after the defense, or the court administrator under Rule 33.03, serves notice of entry of the order to be appealed from on the prosecutor, or within 5 days after the district court notifies the prosecutor in court on the record of the order, whichever occurs first.

All pretrial orders entered and noticed to the prosecutor before the district court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or in the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal.

An appeal by the prosecutor under this rule bars any further appeal by the prosecutor from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecutor can be taken after jeopardy has attached.

An appeal under this rule does not deprive the district court of jurisdiction over pending matters not included in the appeal.

Subd. 3. Cross-Appeal by Defendant. When the prosecutor appeals, the defendant may obtain review of any adverse pretrial or postconviction order by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within 10 days after the prosecutor serves notice of the appeal. In postconviction cases, the notice of cross-appeal may be filed within 60 days after the entry of the order granting or denying postconviction relief, if that is later.

Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the cross-appeal.

Subd. 4. Conditions of Release. Upon appeal by the prosecutor of a pretrial order, Rule 6.02, subds. 1 and 2 govern the conditions for defendant's release. The court must also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.

Subd. 5. Proceedings in Forma Pauperis. An indigent defendant who wants the services of an attorney in an appeal by the prosecutor under this rule must proceed under Rule 28.02, subd. 5.

Subd. 6. Procedure Upon Appeal of Postconviction Order.

(1) Service and Filing. The prosecutor may appeal an order granting postconviction relief by filing a notice of appeal with the clerk of the appellate courts, with proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

A certified copy of the order appealed and the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal by the prosecutor of an order granting postconviction relief must be taken within 60 days after entry of the order.

(3) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order granting postconviction relief under this rule:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
(b) Rule 28.02, subd. 8: the record on appeal;
(c) Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript on record;
(d) Rule 28.02, subd. 10: briefs;
(e) Rule 28.02, subd. 13: oral argument;
(f) Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; and
(g) Rule 28.04, subd. 2(6): attorney fees.

Subd. 7. Procedure Upon Appeal From Order Staying Adjudication.

(1) Service and Filing. The prosecutor may appeal an order staying adjudication by filing a notice of appeal with the clerk of the appellate courts, with proof of service on opposing counsel, the court administrator, the State Public Defender's office, and the Minnesota Attorney General.

The notice must be accompanied by a copy of a written request to the court reporter for a transcript of the proceedings, as appellant deems necessary. No fees or bond for costs are required for the appeal.

A certified copy of the order to be appealed or the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal by the prosecutor from an order staying adjudication must be taken within 10 days after entry of the order.

(3) Briefs. The prosecutor must file and serve the appellant's brief and proof of service on the respondent with the clerk of the appellate courts within 15 days after delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request a transcript, the appellant must file the appellant's brief and proof of service on the respondent with the clerk of the appellate courts together within 15 days after the prosecutor filed the notice of appeal. The brief must identify itself as a stay of adjudication brief.

Within 8 days after service of the appellant's brief, the respondent must file the respondent's brief and proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history.

(4) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order staying adjudication:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
(b) Rule 28.02, subd. 5: proceedings in forma pauperis;
(c) Rule 28.02, subd. 7: release of the defendant pending appeal;
(d) Rule 28.02, subd. 8: the record on appeal; and
(e) Rule 28.02, subd. 13: oral argument.

Subd. 8. Procedure Upon Appeal From Judgment of Acquittal or Vacation of Judgment After a Jury Verdict of Guilty, or From an Order Granting a New Trial.

(1) Service and Filing. The prosecutor may appeal these judgments or orders by filing with the clerk of the appellate courts a notice of appeal and proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

A certified copy of the judgment or order appealed and the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Appeal. An appeal by the prosecutor under this subdivision must be made within 10 days after entry of the judgment or order.

(3) Stay and Conditions of Release. Upon oral notice that the prosecutor intends to appeal under this subdivision, the district court must order execution of the judgment or order stayed for 10 days to allow time to perfect the appeal. The district court must also determine the conditions for defendant's release pending the appeal, which are governed by Rule 6.02, subds. 1 and 2.

(4) Other Procedures. The following rules govern the below-listed aspects of appeals by the prosecutor under this subdivision:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
(b) Rule 28.02, subd. 8: the record on appeal;
(c) Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript and record;

(d) Rule 28.02, subd. 10: briefs;
(e) Rule 28.02, subd. 13: oral argument;
(f) Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; and
(g) Rule 28.04, subd. 2(6): attorney fees.

(5) Cross-Appeals. When the prosecutor appeals under this subdivision, the defendant may obtain review of any adverse pretrial and trial orders and issues by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within 30 days of the prosecutor filing notice of appeal, or within 10 days after delivery of the transcript by the reporter, whichever is later.

If the defendant makes this election, and the jury's verdict is ultimately reinstated, the defendant may not file a second appeal from the entry of judgment of conviction unless it is limited to issues, such as sentencing, that could not have been raised in the cross-appeal.

The defendant may also elect to respond to the issues raised in the prosecutor's appeal and reserve appeal of any other issues until such time as the jury's verdict of guilty is reinstated. If reinstatement occurs, the defendant may appeal from the judgment using the procedures in Rule 28.02, subd. 2.

Rule 28.05 Appeal from Sentence Imposed or Stayed

Subd. 1. Procedure. The following procedures apply to the appeal of a sentence imposed or stayed under these rules:

(1) Notice of Appeal and Briefs. Any party appealing a sentence must file with the clerk of the appellate courts, within 90 days after judgment and sentencing:

(a) a notice of appeal; and
(b) an affidavit of service of the notice on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals the State Public Defender's office.

If all transcripts necessary for the appeal have already been transcribed when the appellant files the notice of appeal, the party appealing the sentence must file with the notice of appeal 9 copies of an informal letter brief, which must identify itself as a sentencing appeal brief, with an affidavit of service on opposing counsel, the Minnesota Attorney General, and in the case of prosecution appeals the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence.

When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts, and an affidavit of service of the request on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals, the State Public Defender's office.

Appellant's brief must be identified as a sentencing appeal brief and must be served and filed within 30 days after delivery of the transcript. The clerk of the appellate courts must not accept a notice of appeal from sentence unless accompanied by the requisite briefs or transcript request and affidavit of service.

A defendant appealing the sentence and the judgment of conviction may combine the two into a single appeal; when this option is selected, the procedures in Rule 28.02 continue to apply.

(2) Transmission of Record. Upon receiving a copy of the notice of appeal, the court administrator must immediately forward to the clerk of the appellate courts:

(a) a transcript of the sentencing hearing, if any;
(b) the sentencing order with the departure report, if any, attached;
(c) the sentencing guidelines worksheet; and
(d) any presentence investigation report.

(3) Respondent's Brief. Within 10 days of service on respondent of appellant's brief, a respondent choosing to respond must serve an informal letter brief on appellant and file with the clerk of the appellate courts 9 copies of the brief.

(4) Reply Brief. Appellant may serve and file a reply brief within 5 days after service of the respondent's brief.

(5) Other procedures. The following rules govern the below-listed aspects of sentencing appeals:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
(b) Rule 28.02, subd. 5: proceedings in forma pauperis;
(c) Rule 28.02, subd. 6: stays;
(d) Rule 28.02, subd. 7: release of the defendant on appeal; and
(e) Rule 28.02, subd. 13: oral argument.

Subd. 2. Action on Appeal. The appellate court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the sentencing court's findings of fact. This review exists in addition to all other powers of review.

The court may:
(a) dismiss or affirm the appeal;
(b) vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence; or
(c) order further proceedings as it may direct.

Comment—Rule 28

Under Rule 28.02, subd. 1 the defendant may obtain review of lower court orders and rulings only by appeal except as may be provided in the case of the extraordinary writ authorized by Minn. Const. Art. VI, § 2, and the postconviction remedy, Minn. Stat. ch. 590. The statutory authorization for the extraordinary writs is contained in Minn. Stat. § 480A.06, subd. 5 and chs. 586 (Mandamus), 589 (Habeas Corpus), and 606 (Certiorari). The procedure for obtaining writs of mandamus or prohibition appears in Minn. R. Civ. App. P. 120 and 121.

A defendant cannot as a matter of right appeal from a stay of adjudication entered under Minn. Stat. § 152.18, subd. 1, which requires the consent of the defendant. However, a defendant may seek discretionary review of such a stay under Rule 28.02, subd. 3. State v. Verschelde, 595 N.W.2d 192 (Minn. 1999).

Rule 28.02, subd. 3 (Discretionary Review) is taken from Minn. R. Civ. App. P. 105, which sets forth the procedure to be followed by a defendant in seeking permission to proceed with an appeal from an order not otherwise appealable. A defendant seeking to appeal from a sentence imposed or stayed in a misdemeanor or gross misdemeanor case would have to proceed under this rule.

Rule 28.02, subd. 4(4) establishes a procedure by which a defendant who has initiated a direct appeal may nonetheless pursue postconviction relief. Certain types of claims are better suited to the taking of testimony and fact-finding possible in the district court, and defendants are encouraged to bring such claims, such as ineffective assistance of counsel where explanation of the attorney's decision is necessary, through postconviction proceedings rather than through direct appeal. See Black v. State, 560 N.W.2d 83, 85 n.1 (Minn. 1997). The order staying the appeal may provide for a time limit within which to file the postconviction proceeding.

Under Rule 28.02, subd. 9 (Transcript of Proceedings and Transmission of the Transcript and Record), the transcript must be ordered within 30 days after filing of the notice of appeal rather than within 10 days as otherwise provided by Minn. R. Civ. App. P. 110.02, subd. 1. The provisions of Minn. R. Civ. App. P. 110 and 111 concerning the content and transmission of the record and transcripts apply to criminal appeals under Rule 28. Therefore, it is necessary in a criminal appeal on ordering the transcript to serve and file a Certificate as to Transcript as required by Minn. R. Civ. App. P. 110.02, subd. 2. If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that party may seek to correct the transcript either by stipulation with the other party or by motion to the district court under Minn. R. Civ. App. P. 110.05.

To the extent that an order granting a defendant a new trial also suppresses evidence, it will be viewed as a pretrial order concerning the retrial and the prosecutor may appeal the suppression part of the order under Rule 28.04, subd. 1(1). State v. Brown, 317 N.W.2d 714 (Minn. 1982). In response to State v. Lee, 706 N.W.2d 491 (Minn. 2005), Rule 28.04, subd. 1(4), was revised to expressly permit a prosecutor to appeal a stay of adjudication ordered by the district court over the objection of the prosecutor.

A timely, good-faith motion by the prosecutor for clarification or rehearing of an appealable order extends the time to appeal from that order. State v. Wollan, 303 N.W.2d 253 (Minn.1981). Originally under Rules 28.04, subd. 2(2) and (8) the prosecutor had five days from entry of an appealable pretrial order to perfect the appeal. It was possible for this short time limit to expire before the prosecutor received actual notice of the order sought to be appealed. These rules as revised eliminate this unfairness and assure that notice of the pretrial order will be served on or given to the prosecutor before the five-day time limit begins to run. In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the court held that in computing the five-day time period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays are excluded under Rule 34.01 before the additional 3 days for service by mail are added under Rule 34.04.

Under Rule 28.04, subd. 2(2), failure to timely serve the notice of appeal on the State Public Defender is a jurisdictional defect requiring dismissal of the appeal. State v. Barrett, 694 N.W.2d 783 (Minn. 2005).

Absent special circumstances, failure of the prosecutor to file the appellant's brief within the 15 days as provided by Rule 28.04, subd. 2(3) will result in dismissal of the appeal. State v. Schroeder, 292 N.W.2d 758 (Minn.1980).

Rule 28.05, subd. 2 (Action on Appeal) is taken from Minn. Stat. § 244.11.

Rule 29. Appeals to Supreme Court

Rule 29.01 Scope of Rule

Subd. 1. Appeals from Court of Appeals and in First-Degree Murder Cases. Rule 29 governs the procedure in misdemeanor, gross misdemeanor, and felony cases for appeals from the Court of Appeals to the Supreme Court and from the district court to the Supreme Court if the defendant has been convicted of first-degree murder.

Subd. 2. Applicability of Rules of Civil Appellate Procedure. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.

Subd. 3. Suspension of Rules. For good cause, the Supreme Court may suspend application of any of these rules on a party's motion or on its own initiative, and may order proceedings as it directs, but cannot alter the time for filing a notice of appeal or a petition for review, unless permitted by Rules 29.03, subd. 3(f) or 29.04, subd. 2.

Rule 29.02 Right of Appeal

Subd. 1. Appeals in First-Degree Murder Cases.

(a) A defendant may appeal as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder.

(b) Either the defendant or the prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from an adverse final order deciding a petition for postconviction relief under Minn. Stat. ch. 590.

(c) The prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from:

(i) a judgment of acquittal after a jury verdict of guilty of first-degree murder;

(ii) an order vacating judgment and dismissing the case after a jury verdict of guilty of first-degree murder; or

(iii) an order granting a new trial under Rule 26.04, subd. 1, after a verdict or judgment of guilty of first-degree murder, if the district court expressly states in the order, or in an accompanying memorandum, that the order is based exclusively on a question of law that the district court concludes is so important or doubtful that it requires a decision by the appellate courts. An order for a new trial is not appealable if based on the interests of justice.

(d) Other charges that were joined for prosecution with the first-degree murder charge may be included in the appeal. No other direct appeals can be taken from the district court to the Supreme Court except as provided in Minnesota Rule of Civil Appellate Procedure 118 (accelerated review by the Supreme Court of cases pending in the Court of Appeals).

Subd. 2. Appeals from Court of Appeals. A party may appeal from a final decision of the Court of Appeals to the Supreme Court only with leave of the Supreme Court.

Rule 29.03 Procedure for Appeals by Defendant in First-Degree Murder Cases

Subd. 1. Service and Filing. A defendant appeals by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts, with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment appealed from is entered. The defendant does not have to post a bond to appeal. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

Subd. 2. Contents of Notice of Appeal. The notice of appeal must specify:

(a) the party or parties filing the appeal;
(b) the names, addresses, and telephone numbers of all counsel and whom they represent;
(c) the judgment or order from which appeal is taken; and
(d) that the appeal is to the Supreme Court.

Subd. 3. Time for Taking an Appeal.

(a) An appeal by a defendant from a final judgment of conviction of first-degree murder must be filed within 90 days after the final judgment. A judgment is final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury, or the finding of the court, and sentence is imposed.

(b) A notice of appeal filed after the announcement of a decision or order – but before sentencing or entry of judgment or order – must be treated as occurring after these events, but on the same day.

(c) A timely motion to vacate the judgment, for a judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in an appeal from the final judgment.

(d) An appeal by a defendant from an adverse final order in a postconviction proceeding in a first-degree murder case must be filed within 60 days after its entry.

(e) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.

(f) For good cause, the district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion or notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.

Subd. 4. Other Procedures. The following rules govern the below-listed aspects of an appeal in a first-degree murder case:

(a) Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings;
(b) Rule 28.02, subd. 5: proceeding in forma pauperis;
(c) Rule 28.02, subd. 6: stay;
(d) Rule 28.02, subd. 7: release of defendant;
(e) Rule 28.02, subd. 9: transcript of proceedings and transmission of the transcript and record;
(f) Rule 28.02, subd. 10: briefs;

(g) Rule 28.02, subd. 11: scope of review;
(h) Rule 28.02, subd. 12: action on appeal; and
(i) Rule 29.04, subd. 9: oral argument.

Rule 29.04 Procedure for Appeals from Court of Appeals

Subd. 1. Service and Filing. A party petitioning for review to the Supreme Court from the Court of Appeals must file 4 copies of a petition for review with the clerk of the appellate courts, with proof of service on opposing counsel and the Minnesota Attorney General. A defendant does not have to file a bond to petition for review.

A party's failure to take any step other than timely filing the petition for review does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

Subd. 2. Time for Petitioning. A party petitioning for review to the Supreme Court from the Court of Appeals must serve and file the petition for review within 30 days after the Court of Appeals files its decision.

For good cause, a judge of the Court of Appeals or a justice of the Supreme Court may, before or after the time to serve and file a petition for review has expired, with or without motion or notice, extend the time to do so up to 30 days from the expiration of the time prescribed by these rules.

Subd. 3. Contents of Petition for Review. The petition for review must not exceed 10 pages, exclusive of the appendix, and must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:

(1) the names, addresses, and telephone numbers of the attorneys for all parties;

(2) the date the Court of Appeals filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals;

(3) a concise statement of the legal issue or issues presented for review, indicating how the district court and the Court of Appeals decided each issue;

(4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the district court and district court judge, and the disposition of the case in the district court and in the Court of Appeals;

(5) a concise statement of facts indicating briefly the nature of the case, and including only the facts relevant to the issue(s) sought to be reviewed;

(6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and

(7) an appendix containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda.

Subd. 4. Discretionary Review. The Supreme Court may exercise discretionary review of any Court of Appeals' decision. The following criteria may be considered:

(1) the decision presents an important question on which the Supreme Court should rule;

(2) the Court of Appeals has ruled on the constitutionality of a statute;

(3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court;

(4) the lower courts have so far departed from the accepted and usual course of justice that the Supreme Court should exercise its supervisory powers; or

(5) a Supreme Court decision will help develop, clarify, or harmonize the law; and

1. the case calls for the application of a new principle or policy;
2. the resolution of the question presented has possible statewide impact; or
3. the question will likely recur unless resolved by the Supreme Court.

Subd. 5. Response to Petition. When a petition for review has been filed, the respondent must file with the clerk of the appellate courts within 20 days after service of the petition on respondent 4 copies of any response, not to exceed 10 pages exclusive of the appendix, and proof of service on appellant. Failing to respond to the petition will not be considered agreement with it.

Subd. 6. Cross-Petition. A party cross-petitioning for review to the Supreme Court must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, 4 copies of a cross-petition for review, not to exceed 10 pages exclusive of the appendix, and proof of service on the petitioner. The cross-petition must conform to Rule 29.04, subd. 3, but the procedural history, statement of facts, and appendix need not be included unless the cross-petitioner disagrees with them as they appear in the petition for review.

The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.

Subd. 7. Action on Petition or Cross-Petition. The Supreme Court must file its order granting or denying review or cross-review within 60 days from the date the petition was filed. Upon the filing of the order, the clerk of the appellate courts must mail a copy of it to the attorneys for the parties.

Subd. 8. Briefs.

(1) Except as subdivision 10 (pretrial appeals) of this rule directs:

(a) appellant must serve and file the appellant's brief and appendix within 30 days after entry of the order granting permission to appeal;

(b) respondent must serve and file the respondent's brief and appendix, if any, within 30 days after service of appellant's brief; and

(c) appellant may serve and file a reply brief within 10 days after service of the respondent's brief.

(2) In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but appellant's brief must also contain a procedural history.

Subd. 9. Oral Argument. Each party must serve and file with the party's initial brief a notice stating whether the party requests oral argument. Oral argument must be granted unless the court determines it is unnecessary because:

(1) neither party has requested oral argument in the notice served and filed with the initial briefs;
(2) a party forfeits oral argument under Minnesota Rule of Civil Appellate Procedure 134.01 for not timely filing its brief; or
(3) the parties waive oral argument by joint agreement under Minnesota Rule of Civil Appellate Procedure 134.06.

The Supreme Court may direct presentation of oral argument in any case.

Subd. 10. Appeals Involving Pretrial Orders.

(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecutor under Rule 28.04, the appellant must, within 15 days from the date of entry of the order granting review, serve the appellant's brief on respondent and file 14 copies with the clerk of the appellate courts.

Within 8 days of service, respondent must serve the respondent's brief on appellant and file 14 copies with the clerk of appellate courts.

(2) Hearing. In pretrial appeals, the date of oral argument or submission of the case to the court without oral argument must not be later than 3 months after all briefs have been filed.

The Supreme Court must not hear or accept as submitted any pretrial appeal not argued or submitted within this 3-month period. If the case has not been argued or submitted within 3 months, the district court must proceed under the judgment of the Court of Appeals as if no appeal had been taken to the Supreme Court.

(3) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on an appeal to the Supreme Court by the prosecutor in a case originally appealed by the prosecutor to the Court of Appeals under Rule 28.04. The fees and costs must be paid by the governmental unit responsible for the prosecution.

(4) Conditions of Release. Upon an appeal to the Supreme Court in a case originally appealed by the prosecutor under Rule 28.04, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release pending the appeal.

Subd. 11. Other Procedures. The following rules govern the below-listed aspects of an appeal to the Supreme Court from the Court of Appeals:

(1) Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings;
(2) Rule 28.02, subd. 5: proceeding in forma pauperis;
(3) Rule 28.02, subd. 6: stay;
(4) Rule 28.02, subd. 7: release of defendant;
(5) Rule 28.02, subd. 8: record on appeal;
(6) Rule 28.02, subd. 11: scope of review; and
(7) Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal.

Rule 29.05 Procedure for Appeals by the Prosecutor in Postconviction Cases

Rule 28.04, subd. 6, applies to an appeal to the Supreme Court by the prosecutor from an adverse final order of the district court in postconviction proceedings in a first-degree murder case.

Rule 29.06 Procedure for Prosecutor Appeals from a Judgment of Acquittal, Vacation of Judgment after a Jury Verdict of Guilty, or Order Granting a New Trial

In first-degree murder cases, Rule 28.04, subd. 8 governs appeals by the prosecutor to the Supreme Court from:

(1) a judgment of acquittal after a jury verdict of guilty;
(2) an order vacating judgment and dismissing the case after a jury verdict of guilty; or
(3) an order granting a new trial.

Comment—Rule 29

After a first-degree murder conviction, only the Supreme Court has appellate jurisdiction. See Minn. Stat. §§ 480A.06, subd. 1 and 632.14. This includes appeals from orders denying postconviction relief from convictions in first-degree murder cases. See Minn. Stat. § 590.06. However, appeals in first-degree murder cases before conviction are decided by the Court of Appeals under Rule 28, and may be reviewed by the Supreme Court via a petition for further review.

Under Minn. R. Civ. App. P. 136.02, the clerk of the appellate courts is to enter judgment under the decision of the Court of Appeals not less than 30 days after that decision is filed. The filing of a petition for review under Rule 29.04 stays entry of the judgment and transmission of the judgment back to the clerk of the district court according to Minn. R. Civ. App. P. 136.02 and 136.03. If the petition for review is denied, the judgment is to be entered and transmitted immediately.

Rule 30. Dismissal

Rule 30.01 By Prosecutor

The prosecutor may dismiss a complaint or tab charge without the court's approval, and may dismiss an indictment with the court's approval. The prosecutor must state the reasons for the dismissal in writing or on the record. In felony and gross misdemeanor cases, if the dismissal is on the record, it must be transcribed and filed.

Rule 30.02 By Court

The court may dismiss the complaint, indictment, or tab charge if the prosecutor has unnecessarily delayed bringing the defendant to trial.

Comment—Rule 30

Stated reasons for dismissal under Rule 30.01 may include satisfactory completion of a pretrial diversion program.

According to State v. Aubol, 309 Minn. 323, 244 N.W.2d 636 (1976), leave to dismiss an indictment must be granted if the prosecutor has provided a factual basis for the insufficiency of the evidence to support a conviction, and the court is satisfied that the prosecutor has not abused prosecutorial discretion.

Prosecutors and judges should be aware of their obligations under Minn. Stat. § 611A.0315 of the Minnesota Crime Victims Rights Act concerning notice to domestic abuse victims upon dismissal or refusal to prosecute the charge.

Rule 31. Harmless Error and Plain Error

Rule 31.01 Harmless Error

Any error that does not affect substantial rights must be disregarded.

Rule 31.02 Plain Error

Plain error affecting a substantial right can be considered by the court on motion for new trial, post-trial motion, or on appeal even if it was not brought to the trial court's attention.

Comment—Rule 31

On appeal, the plain error doctrine applies to unobjected-to prosecutorial misconduct. The defendant bears the burden of showing that error occurred and that it was plain. Once the defendant has made that showing, the burden rests with the prosecutor to show that the error did not affect the defendant's substantial rights. See State v. Ramey, 721 N.W.2d 294, 299-300 (Minn. 2006).

Rule 32. Motions

Requests to the court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing, unless the court or these rules permit it to be made orally. The motion must state the grounds on which it is made and must set forth the relief or order sought. A motion may be supported by affidavit.

Rule 33. Service and Filing of Papers

Rule 33.01 Service; Where Required

Written motions – other than those heard ex parte – written notices, and other similar papers must be served on each party.

Rule 33.02 Service; On Whom Made

Service required or permitted to be made on a represented party must be made on the attorney unless the court orders personal service on the party. Service on the attorney or party must be made in the manner provided in civil actions, as ordered by the court, or as required by these rules.

Rule 33.03 Notice of Orders

Upon entry of an order made on a written motion subsequent to arraignment, the court administrator must promptly mail a copy to each party and must make a record of the mailing. Lack of notice of entry by the court administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, unless these rules direct otherwise.

Rule 33.04 Filing

(a) Search warrants and search warrant applications, affidavits, and inventories – including statements of unsuccessful execution – and papers required to be served must be filed with the court administrator. Papers must be filed as in civil actions, but the originals of papers filed by facsimile transmission must be filed as provided in Rule 33.05.

(b) Search warrants and related documents need not be filed until after execution of the search or the expiration of 10 days, unless this rule directs otherwise.

(c) The prosecutor may request that a complaint, indictment, application, arrest warrant, search warrant, supporting affidavits, and any order granting the request not be filed.

(d) An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that: (1) in the case of complaint, indictment, or arrest documents, filing may cause a potential arrestee to flee, hide, or otherwise prevent the execution of the warrant; or, (2) in the case of a search warrant application or affidavit, filing may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.

(e) The order must further direct that on execution and return of an arrest warrant, the filing required by paragraph (a) must be complied with immediately. For a search warrant, following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

Rule 33.05 Facsimile Transmission

Complaints, orders, summons, warrants, and other documents – including orders and warrants authorizing the interception of communications under Minnesota Statutes, Chapter 626A – may be sent via facsimile transmission. Procedural and statutory requirements for the issuance of a warrant or order must be met, including the making of a record of the proceedings. A facsimile order or warrant issued by the court has the same force and effect as the original for procedural and statutory purposes. The original order or warrant, along with any other documents and affidavits, must be delivered to the court administrator of the county in which the request or application was made. The original of any facsimile transmissions received by the court must be promptly filed.

Comment—Rule 33

Minn.R.Civ.P. 5.02 provides the method for service in civil actions.

Rule 34. Time

Rule 34.01 Computation

Time must be computed as follows except as provided by Rules 3.02, subd. 2; 4.02, subd. 5(1); 4.02, subd. 5(3); and 4.03.

The day of the act or event from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, or a legal

holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is 7 or fewer days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, and any other day appointed as a holiday by the President or the Congress of the United States or by the State.

Rule 34.02 Extension

When an act is required or allowed to be done within a specified time, the court may for cause:

(a) within the time allowed, extend the time, with or without motion or notice, if a party requests the extension before the original time, or the previously-extended time, expires;

(b) after the time allowed has expired, permit the act to be done, upon motion, if failure to act was the result of excusable neglect.

The court may not extend the time for taking any action under Rules 26.03, subd. 18(3); 26.04, subd. 1(3); or 26.04, subd. 3, or extend the time to appeal except as provided by Rules 28.02, subd. 4(3)(g); 29.03, subd. 3(f); and 29.04, subd. 2.

Rule 34.03 For Motions; Affidavits

A written notice of motion and motion, other than one that may be heard ex parte, must be served at least five days before the time specified for the hearing, unless a rule or court order fixes a different time. For cause, an order fixing a different time may be granted on ex parte application.

When a party supports a motion by affidavit, the affidavit must be served at least one day before the hearing, unless the court permits it to be served later.

Rule 34.04 Additional Time After Service by Mail

When a party is served with a notice or other paper by mail, three days must be added to the time the party has the right, or is required, to act.

Rule 34.05 Unaffected by Expiration

The expiration of a term of court does not affect the time-period for doing any act or taking any proceeding, or affect the court's power to do any act or take any proceeding in any pending action.

Comment—Rule 34

Rule 34.01 (Computation) adopts Minn.R.Civ.P. 6.01 except that it excludes Saturdays, Sundays, and legal holidays from computation when the period of time allowed is "7 days or less" rather than "less than 7 days." Minnesota Statutes § 645.44, subd. 5, sets forth the legal holidays for the State of Minnesota.

In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the Supreme Court held that when calculating the five-day period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays must be excluded from the computation of the period allowed under Rule 34.01 before the additional three days by mail are added under Rule 34.04.

Rule 35. Courts and Court Administration

The district courts are deemed open at all times for the purpose of filing any proper paper, issuing and returning or certifying process, and making motions and orders. Unless otherwise ordered, the courts are deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The court administrator's office, with the court administrator or a deputy in attendance, must be open during business hours on all days except Saturdays, Sundays, or legal holidays.

Comment—Rule 35

Legal holidays are defined by Minn. Stat. § 645.44, subd. 5. The rule supersedes Minn. Stat. §§ 484.07 and 484.08 to the extent inconsistent.

Rule 36. Search Warrants on Oral Testimony

Rule 36.01 General Rule

A request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge, subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile transmission, or by other appropriate means.

Rule 36.02 When Request by Oral Testimony Appropriate

An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit. The judge must make this determination the initial focus of the oral warrant request.

Rule 36.03 Application

The person requesting the warrant must prepare a duplicate original warrant and must read the duplicate original warrant, verbatim, to the judge. The judge must prepare an original warrant by recording, verbatim, what has been read by the applicant. The judge may direct modifications, which must be included on the original and the duplicate original warrant.

Rule 36.04 Testimony Requirements

When the officer informs the judge that the purpose of the communication is to request a search warrant, the judge must:

(1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge, the recording may be done by the applicant for the search warrant, but the tape or other medium used to make the record must be submitted to the issuing judge as soon as practical, and no later than the time for filing in Rule 33.04.

(2) Identify and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.

(3) As soon as is practical after receiving the testimony, the judge must direct that the record of the oral warrant request be transcribed. The judge must certify the accuracy of the transcription. If a

longhand verbatim record is made, the judge must sign it.

Rule 36.05 Issuance of Warrant

The judge must order issuance of a warrant if:

(a) the circumstances make it reasonable to dispense with a written affidavit;
(b) the warrant request conforms with the law; and
(c) probable cause exists for issuance of the warrant.

The judge must order the issuance of a warrant by directing the applicant to sign the judge's name on the duplicate original warrant. The judge must immediately sign the original warrant and enter on the face of the original warrant the exact time the judge signed the warrant. The finding of probable cause may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Rule 36.06 Filing

The original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents must be filed as Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium must also be filed with the court.

Rule 36.07 Contents of Warrant

The contents of a warrant issued on oral testimony must be the same as the contents of a warrant on affidavit.

Rule 36.08 Execution

The execution of a warrant obtained through oral testimony is subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant must enter the exact time of execution on the face of the duplicate original warrant.

Comment—Rule 36

The procedure found in Rule 36 is derived from State v. Lindsey, 473 N.W.2d 857 (Minn. 1993).

Minn. Stat. § 626.16, which requires that a written document be prepared for presentation to the person whose premises or property is searched, or that can be left on the premises if no persons are present, mandates the preparation of the duplicate warrant in Rule 36.03. Judges and judicial officers who may receive oral warrant requests at home are advised to have appropriate forms available for preparation of the original warrant.

Judges are cautioned to avoid engaging in any preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

The officer and the judge must keep in mind that in addition to the special requirements for issuance of an oral warrant, all other requirements for the issuance of a warrant must also be met, including the basis for a no-knock and nighttime warrant. See Minn. Stat. §§ 626.01-.18; 629.30.

Rules 36.07 and 36.08 emphasize that the use of the oral warrant process does not justify any other departures from traditional warrant law and practice.