REPORT TO THE MINNESOTA SUPREME COURT

FROM

THE SUPREME COURT ADVISORY COMMITTEE ON

RULES OF CRIMINAL PROCEDURE

Pursuant to the Order of the Supreme Court, dated June 29, 1987, promulgating the last amendments to the Rules of Criminal Procedure, the Advisory Committee has continued to monitor the rules and to hear and accept comments concerning them. For over a year the Committee has met almost monthly in day-long meetings to consider possible amendments to the Rules. During this time all comments received by the Committee or forwarded to it by the Court have been distributed to all members of the Committee and have been discussed and fully considered. The Committee also considered numerous other matters raised by Committee members based on their experience, observations, and comments received from others concerning the rules. Additionally, the Committee considered all matters referred to it by the Supreme Court.

The major source of potential amendments considered by the Committee were the Uniform Rules of Criminal Procedure (1987) which incorporate and effectuate the American Bar Association Standards for Criminal Justice (1985). Those Uniform Rules were prepared for the National Conference of Commissioners on Uniform State Laws after four years of extensive study and consideration by a distinguished Committee including Jay A. Rabinowitz, Rhoda B. Billings, William G. Callow, Michael B. Getty, Maynard E. Pirsig, Elwaine F. Pomeroy, Dixon W. Prentice, Curtis R. Reitz,

Kenneth F. Kirwin, Phillip Carroll, William J. Pierce, and Robert H. Cornell.

As originally promulgated and amended over the years, the Minnesota Rules of Criminal Procedure met or exceeded most of the American Bar Association Standards for Criminal Justice then in effect. As a result of changes in those Standards in the second edition issued in 1980 and further amendments made in 1984 and 1985 it became necessary to comprehensively review the Minnesota Rules of Criminal Procedure to determine whether they still complied with those Standards. The Uniform Rules of Criminal Procedure (1987) provide a useful means of examining Minnesota's compliance with the ABA Standards. The 1974 version of the Uniform Rules were redrafted in response to the substantial revisions in the ABA Standards. Subsequently, on February 9, 1988, the ABA House of Delegates adopted a resolution approving the 1987 revision of the Uniform Rules noting that they were in substantial accord with the ABA Standards and provided an effective tool for implementing those Standards.

The Minnesota Supreme Court in August, 1988, requested the Advisory Committee to consider the Uniform Rules of Criminal Procedure (1987). The Committee has done that and as a result has proposed a number of amendments to the rules and comments. After extensive review, the Committee has determined that, with only a few exceptions, the Minnesota Rules of Criminal Procedure, with the proposed amendments, will either be in substantial compliance or exceed the ABA Standards for Criminal Justice

(1985) and the Uniform Rules of Criminal Procedure (1987) which incorporate those Standards.

In those few areas where the Minnesota Rules differ from the ABA Standards and the Uniform Rules, the Committee has determined that the Minnesota Rules are superior and therefore has declined, after careful consideration, to recommend any change. The following are those areas on which Minnesota practice differs:

1. ABA Standards for Criminal Justice 10-5.3(d) (1985) and Unif. R. Crim. P. 341(g)(2)(1987) expressly provide for release upon posting 10 percent of the face value of an unsecured bond or upon posting a secured bond by an uncompensated surety. Minnesota Rule 6.02 does not expressly refer to these options, but the proposed comment on that rule points out that such conditions could be set in an unusual case.

2. ABA Standards for Criminal Justice 7-3.8(a)(1985) and Unif. R. Crim. P. 464(j)(1987) restrict disclosure of certain mental examination information until later in the proceedings, whereas such information is to be provided to all parties forthwith under Minnesota Rule 20.

3. ABA Standards for Criminal Justice 11-3.2(c) and 11-3.3(b)(1985) and Unif. R. Crim. P. 423(1)(1987) prohibit use of evidence obtained as a result of the defendant disclosing the names of prospective trial witnesses. Such a restriction is not expressly included in the Minnesota Rules.

4. ABA Standards for Criminal Justice 11-2.1(c) (1985) and Unif. R. Crim. P. 422(a)(5), require the automatic disclosure by the prosecuting attorney of any exculpatory information without any request by the defendant. Minnesota Rule 9.01, subd. 1 requires the production of such information, but only upon request by the defendant.

At various times since this Committee's last Report to the Court, the Court has requested the Committee to consider certain subjects. With respect to those matters on which the Committee has determined that rule or comment changes are necessary,

appropriate changes are included in the proposed amendments submitted with this report. On the following matters the Committee, after careful consideration, has determined that no changes in the rules or comments are recommended:

1. Sentencing guidelines for non-felony offenses. The Committee believes that this is not a procedural matter and is not a proper subject for the Criminal Rules. The matter should be referred to the Sentencing Guidelines Commission.

2. Report 111A concerning electronically monitored home confinement, as approved by the House of Delegates of the American Bar Association on August 9-10, 1988. The Committee believes that the issues raised in the report are not procedural and are therefore not proper for consideration by the Committee for inclusion in the rules.

3. ABA Standards for Criminal Justice 7-5.8, 7-5.9, and 7-5.10 concerning competence and confessions, as adopted by the House of Delegates of the American Bar Association on August 9-10, 1988. The Committee believes that these Standards concern matters of evidence and are not proper subjects for inclusion in the Rules of Criminal Procedure.

4. Mandatory transcripts. The Committee reviewed the rules to determine whether any unnecessary transcripts are required to be prepared automatically. The Committee has found no such problem in the criminal rules. Automatic transcripts are required only for felony and gross misdemeanor guilty pleas (Rule 15.09) and sentencing proceedings (Rule 27.03, subd. 6) and for depositions (Rule 21.04, subd. 2). Those transcripts are necessary and no changes are recommended in these rules.

5. Rule 18.06(5). In light of State v. Scruggs, 421 N.W.2d 707 (Minn. 1988) the Committee considered and rejected making any change in this rule concerning the admissibility of written sworn statements before the grand jury.

The Committee is very concerned about the delays caused in some districts by the large numbers of guilty pleas occurring on the day of trial. When that happens, judicial scheduling becomes

difficult and the public interest suffers. Private citizens, law enforcement officers, court personnel, and counsel should not have to appear for trial on a case that then settles when that case could have been settled earlier. The recommended amendments restricting the continuation and bifurcation of the Omnibus Hearing are intended to encourage the earlier settlement of cases so that this waste of resources and the emotional strain on private citizen witnesses can be minimized. A necessary part of this effort would be to have mandatory plea discussions as part of the Omnibus Hearing at a time substantially before the trial. This could be done by the trial court under present law.

The Committee is also concerned about the tendency of judicial districts to adopt special rules in areas already governed by the Rules of Criminal Procedure and suggests that this problem be reviewed further by the Supreme Court.

As part of the Advisory Committee's deliberations before making these recommendations to the Court, a public hearing was held on August 4, 1989, at which interested persons were given the opportunity to be heard concerning the proposed amendments being considered by the Committee. Notice of that hearing was published on July 14, 1989, and the proposed amendments were published on July 21, 1989. In addition to hearing oral testimony, all written comments received concerning the proposed amendments were copied and distributed to all Committee members. The Committee met twice following the public hearing and made some revisions in the proposals herewith submitted to the Court.

Additionally, the Committee has included in the proposed amendments to the rules, comments, and forms, necessary language changes to remove any gender references.

As a result of this lengthy process, the Advisory Committee on Rules of Criminal Procedure submits to the Supreme Court, together with this report, its Proposed Amendments to the Minnesota Rules of Criminal Procedure. The proposed amendments include a revised single set of forms to replace the existing two sets of forms for misdemeanors and for felonies and gross misdemeanors. The mandatory felony and gross misdemeanor forms provided for by Rule 2.03 are not effected by this new set of forms.

Dated: September 1, 1989

Respectfully submitted,

Frank Claybourne, Chairman
Supreme Court Advisory
Committee on Rules of
Criminal Procedure

PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

-- September 1, 1989 --

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments be made in the Minnesota Rules of Criminal Procedure. In the proposed amendments, except in the forms and except as otherwise indicated, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Comments on Rule 1.02.

Add the following paragraph at the end of the existing comments on Rule 1:

> "In accord with the purpose of these rules to provide for a just and speedy determination of criminal proceedings, the rules specify time limits and consolidate court appearances and hearings whenever possible. Rule 11 provides for an Omnibus Hearing for the determination of all pre-trial issues. Under Rules 8.04, 11.04, and 11.07, that hearing must be commenced within 14 days after the appearance under Rule 8 and must be completed and all issues decided within 30 days after the appearance under Rule 8. Extensions of those time limits may be permitted by the trial court, but only for good cause related to the particular case. It would violate the purpose of these rules to bifurcate or further continue Omnibus Hearings on a general basis unrelated to the circumstances of a particular case."

2. Rule 2.01. Contents; Before Whom Made.

Amend this rule by adding the following paragraph at the end of the existing rule:

> "Any complaint, supporting affidavits, or supplementary sworn testimony required by this rule to be made or taken upon oath before the issuing judge or judicial officer may be made or taken by telephone, video equipment, or similar device at the discretion of such judge or judicial officer."

3. Rule 2.03. Complaint Forms - Felony or Gross Misdemeanors.

Amend this rule as follows:

> "Rule 2.03. Complaint Forms - Felony or Gross Misdemeanors
>
> For all complaints charging a felony or gross misdemeanor offense the prosecuting attorney or such judge or judicial officer authorized by law to issue process pursuant to Rule 2.02 shall use an appropriate form authorized and supplied by the State Court Administrator <u>or a word processor-produced complaint form in compliance with the supplied form and approved by Information Systems Office, State Court Administration</u>. If for any reason such form is unavailable, failure to comply with this rule shall constitute harmless error under Rule 31.01."

4. Comments on Rule 2.01.

Amend the comments on Rule 2 by adding the following two paragraphs after the existing fifth paragraph:

"Rule 2.01 permits the judge or judicial officer to review the complaint and any supporting affidavits or supplementary testimony and to administer the oath by telephone, video equipment, or similar electronic device. Any supplementary testimony so taken shall be recorded, transcribed and filed. If the complaint is issued and a warrant is also necessary, they may be transmitted by facsimile transmission as permitted by Rule 33.05. By this method, much time, travel and expense can be saved in those counties where a judge is not readily available to the complainant.

"References in the rules to clerks of court for the trial courts include court administrators. See Minn. Stat. §485.01 (1988) authorizing court administrators to perform any duties, functions and responsibilities required of clerks of court."

5. Rule 3.01. Issuance.

Amend the fourth and fifth paragraphs of this rule as follows:

"For all other misdemeanors, a summons shall be issued rather than a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to a summons, or the whereabouts of the defendant is unknown, or the arrest of the defendant is necessary to prevent imminent bodily harm to ~~himself~~ the defendant or another.

"The issuing officer may issue a summons instead of a warrant whenever ~~he is~~ satisfied that a warrant is unnecessary to secure the appearance of the defendant, and shall issue a summons whenever requested to do so by the prosecuting attorney authorized to prosecute the offense charged in the complaint."

6. Rule 3.02, Subd. 1. Warrant.

Amend the first sentence of this rule as follows:

"The warrant shall be signed by the issuing officer and shall contain the name of the defendant, or, if ~~his name is~~

unknown, any name or description by which ~~he~~ the defendant can be identified with reasonable certainty."

7. Rule 3.03, Subd. 3. Manner.

Amend this rule as follows:

"Subd. 3. Manner. The warrant shall be executed by the arrest of the defendant. If the offense charged is a misdemeanor the defendant shall not be arrested on Sunday, ~~or on a legal holiday,~~ or between the hours of ~~9:00~~ 10:00 o'clock p.m. and ~~9:00~~ 8:00 o'clock a.m. on any other day ~~unless the offense is punishable by incarceration, and then only~~ except by direction of the issuing officer, endorsed on the warrant when exigent circumstances exist or when the person named in the warrant is found on a public highway or street. The officer need not have the warrant in ~~his~~ possession at the time of the arrest, but shall inform the defendant of the existence of the warrant and of the charge ~~against him~~.

The summons shall be served on an individual defendant by delivering a copy to ~~him~~ the defendant personally or by leaving it at ~~his~~ the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. A summons directed to a corporation shall 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."

8. Rule 3.04, Subd. 2. Issuance of New Complaint, Warrant or Summons.

Amend this rule as follows:

"Subd. 2. Issuance of New Complaint, Warrant or Summons. During pre-trial proceedings affecting any person arrested under a warrant or appearing in response to a summons issued upon a complaint, the proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued thereon, provided the prosecuting attorney promptly moves for such continuance on the ground:

(a) that the initial complaint does not properly name or describe the defendant or the offense ~~with which **he** is~~ charged; or

(b) that on the basis of the evidence presented at the proceeding it appears that there is probable cause

to believe that the defendant has committed a different offense from that charged in the complaint and that ~~he~~ the prosecuting attorney intends to charge the defendant with such offense.

If the proceedings are continued, the new complaint shall be filed and process issued thereon as soon as possible. In misdemeanor cases, if the defendant during the continuance is unable to post any bail which might be required under Rule 6.02, subd. 1, then ~~he~~ the defendant must be released subject to such non-monetary conditions as deemed necessary by the court under that Rule."

9. Comments on Rule 3.

Amend the third and fourth paragraphs of the comments on Rule 3 as follows:

"Additionally, a summons may be issued in any case whenever the issuing officer is satisfied that a warrant is unnecessary to secure the appearance of the defendant and shall be issued if the prosecuting attorney requests it. A summons may be issued, therefore, although the prosecuting attorney has requested a warrant, but shall be issued if ~~he~~ the prosecuting attorney requests ~~it~~ summons."

"Where the defendant is charged with a misdemeanor offense ~~for which he could be sentenced~~ punishable upon conviction ~~to~~ by incarceration and not just ~~to~~ by a fine, the issuing officer must still issue a summons instead of a warrant unless there is a substantial likelihood that the accused will not respond to a summons, or the defendant cannot be located, or the arrest of the defendant is necessary to prevent bodily harm to ~~himself~~ the defendant or another. This standard is consistent with that in Rule 6 governing the mandatory issuance of citations for misdemeanors in lieu of making an arrest, and is taken substantially from ABA Standards, Pre-Trial Release 3.2 (Approved Draft, 1968). See also 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."

10. Comments on Rule 3.01.

Amend the last sentence of the fifth paragraph of the comments on Rule 3 as follows:

"The remedy of a defendant who has been arrested by warrant is to request the imposition of the conditions of release under Rule 6.02, subd. 1 upon ~~his~~ the initial court appearance."

11. Comments on Rule 3.02, Subd. 1.

Amend the sixth sentence of the eighth paragraph of the comments on Rule 3 as follows:

"In misdemeanor cases, the issuing officer must set and endorse on the warrant the amount of bail which the defendant may pay to obtain ~~his~~ release."

12. Comments on Rule 3.02, Subd. 1.

Amend the ninth and tenth paragraphs of the comments on Rule 3 as follows:

"The words "issuing officer" in Rules 3.01 and 3.02, subd. 1, refer to the judge or judicial officer who issues process upon the complaint and does not refer to the arresting officer. Rule 3.02, subd. 2 sets forth the directions the warrant shall contain for the time of the defendant's first court appearance after ~~his~~ arrest.

"Present Minnesota law requires that ~~he~~ 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. §§ 629.42, 629.401 (1971).) F.R.Crim.P. 5(a) contains a similar provision."

13. Comments on Rule 3.02, Subd. 2(1).

Amend the first sentence of the twelfth paragraph of the comments on rule 3 as follows:

"The first limitation (Rule 3.02, subd. 2(1)) is that if the court which issued the warrant is in session when the defendant is arrested, ~~he~~ the defendant shall be brought promptly before that court."

14. Comments on Rule 3.03, Subd. 3.

Amend the nineteenth and twentieth paragraphs of the comments on Rule 3 as follows:

"Rule 3.03, subd. 3 provides that the warrant shall be executed by arresting the defendant. The prohibition against an arrest on Sunday or between the hours of 9 10:00 p.m. and 9 8:00 a.m. unless expressly authorized on the warrant adopts ~~Minn. St. §629.31 (1971)~~ Minn. Stat. §629.31 (1988) ~~and further extends the prohibition to legal holidays (See Rule 34.01 as to the definition of "legal holidays").~~ The exigency requirement for permitting an arrest during the proscribed time is in addition to and not in conflict with the statute and is in accord with the historical practice. The minor nature of misdemeanors should not ordinarily justify an arrest during the proscribed period of time, ~~and under Rule 3.03, subd. 3, an arrest on a warrant for a misdemeanor punishable by a fine only may not be made during the proscribed times under any circumstances~~. The issuing officer may not, therefore, give blanket authorization on the warrant for all such arrests, but rather shall endorse ~~his~~ the authorization on the warrant only when such an arrest is required by exigent circumstances.

"Otherwise, the time and manner of making the arrest is left to existing statutory law. (See Minn.Stat. §§ 629.31 (as to time in the case of felonies and gross misdemeanors), 629.32, 629.33 (1971) (as to manner).) The provision of Rule 3.03, subd. 3 that the arresting officer need not have the warrant in ~~his~~ possession is in accord with Minn.Stat. § 629.32 (1971). The provision that the defendant shall be informed of the existence of the warrant and of the charge ~~against him~~ follows F.R.Crim.P. 4(c)(3). In Rule 3.03, subd. 3 there is no specific requirement as in Minn.Stat. § 629.32 (1971) and F.R.Crim.P. 4(c)(3) that the defendant be shown the warrant upon request as soon as possible. When brought promptly before a judge or judicial officer following arrest the warrant and complaint will be available to ~~him~~ the defendant."

15. Rule 4.02. Arrest Without a Warrant.

Amend this rule as follows:

"Rule 4.02. Arrest Without a Warrant

Following an arrest without a warrant:

Subd. 1. Release by Arresting Officer. If the arresting officer or ~~his~~ the officer's superior determines that further detention is not justified, such officer or ~~his~~ the officer's superior shall immediately release the arrested person from custody.

Subd. 2. Citation. The arresting officer or ~~his~~ the officer's superior may issue a citation to and release the arrested person as provided by these rules, and must do so if ordered by the prosecuting attorney or by a judge or judicial officer of the district court of the county where the alleged offense occurred or by any person designated by the court to perform that function.

Subd. 3. Notice to Prosecuting Attorney. As soon as practical after the arrest, the arresting officer or ~~his~~ the officer's superior shall notify the prosecuting attorney of the arrest.

Subd. 4. Release by Prosecuting Attorney. The prosecuting attorney may order the arrested person released from custody.

Subd. 5. Appearance Before Judge or Judicial Officer.

(1) Before Whom and When. ~~If an~~ An arrested person who is not released pursuant to this rule or Rule 6, ~~he~~ shall be brought before the nearest available judge of the district court of the county where the alleged offense occurred or judicial officer of such court. ~~He~~ The defendant shall be brought before such judge or judicial officer without unnecessary delay, and in any event, not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon thereafter as such judge or judicial officer is available. Provided, however, in misdemeanor cases, ~~if the~~ a defendant who is not brought before a judge or judicial officer within the 36-hour limit, ~~he~~ shall be released upon citation as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged Under Minn. Stat. §169.121 or Minn. Stat. §169.129. At or before the time of the defendant's appearance as required by Rule 4.02, subd. 5(1), a complaint shall be presented to the judge or judicial officer referred to in Rule 4.02, subd. 5(1) or to any judge or judicial officer authorized to issue criminal process upon the offense charged in the complaint. The complaint shall be filed forthwith 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 prosecuting attorney or the certificate of the judge or judicial officer as provided by Rule 2.02; and (2) the judge or judicial officer determines from the facts set forth separately in writing in or with the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that defendant committed it. Otherwise,

the defendants shall be discharged, the complaint and any supporting papers shall not be filed, and no record made of the proceedings.

(3) Complaint or Tab Charge; Misdemeanors; Gross Misdemeanors Charged Under Minn. Stat. §169.121 or Minn. Stat. §169.129. If there is no complaint made and 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 under Minn. Stat. §169.121 or Minn. Stat. §169.129, the clerk shall enter upon the records a brief statement of the offense charged including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. This brief statement shall be a substitute for the complaint and is referred to as a tab charge in these rules. However, if the judge orders, or if requested by the person charged or ~~his attorney~~ defense counsel, a complaint shall be made and filed. If a complaint is so requested in a gross misdemeanor case charged under Minn. Stat. §169.121 or Minn. Stat. §169.129, the appearance under Rule 5 shall be continued pending issuance of the complaint. Such complaint shall be made and filed within 48 hours after the demand therefor, if the defendant is in custody or within thirty (30) days of such demand if the defendant is not in custody. If no valid complaint has been made and filed within the time required by this rule, the defendant shall be discharged, the proposed complaint, if any, and any supporting papers shall not be filed, and no record shall 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 there is probable cause 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 shall be arraigned. When a charge has been dismissed for failure to file a valid complaint and a valid complaint is thereafter filed, a warrant shall 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 thereto."

16. Comments on Rule 4.02.

Amend the second through the seventh paragraphs of the comments as follows:

"Rule 4.02, subd. 1 directs an officer who makes an arrest without a warrant or ~~his~~ the officer's superior to release the arrested person before ~~his~~ the initial

appearance in court without proceeding further ~~against him~~, if the officer determines that further detention is not justified. This might occur when, for example, further investigation disclosed to the satisfaction of the officer that the defendant did not commit the offense for which ~~he was~~ arrested. (See similar provisions in ALI Model Code of Pre-Arraignment Procedure, § 120.9(2) (Proposed Official Draft #1, 1972), Wis.Stat. § 968.08).

"Rule 4.02, subd. 4 similarly authorizes the prosecuting attorney to order the release of a person arrested without a warrant without proceeding further ~~against him~~. This would occur, for example, if the prosecuting attorney decides not to file a complaint.

"Rule 4.02, subd. 3 provides that the prosecuting attorney shall be notified of an arrest without a warrant as soon as practical in order ~~that he may~~ to determine whether to continue the prosecution and if so, to draw a complaint.

"Rule 4.02, subd. 2 provides that the officer arresting without a warrant or ~~his~~ the officer's superior may issue a citation as provided by Rule 6.01 and ~~that he~~ must do so if ordered by the prosecuting attorney or by a judge or judicial officer described in the rule.

"Rule 4.02, subd. 5(1) prescribing the time within which a person arrested without a warrant shall be first brought before the court recognizes that additional time is needed to determine whether to continue the prosecution and to draw the complaint. So there is no requirement that the defendant be brought promptly before the appropriate court after ~~his~~ arrest if the court is in session, but it is necessary under Rule 4.02, subd. 5(1) that the defendant be brought before such court without "unnecessary delay". (Compare Rule 3.02, subd. 2.) The 36-hour period does not include the day of arrest, Sundays, or legal holidays. Otherwise the intent of Rule 4.02, subd. 5(1) and Rule 3.02, subd. 2 is the same, namely, that the 36-hour period is not an automatic holding period and that the defendant shall be brought before the court at the earliest possible time within the period. In exceptional cases, however, the prosecuting attorney shall not be precluded by this section from seeking relief pursuant to Rule 34.02. The effect of failure to comply with Rules 4.02, subd. 5(1) and 3.02, subd. 2 on the admission of confessions or other evidence or on the jurisdiction of the court is left to case-by-case development. In State v. Wiberg, 296 N.W.2d 388 (Minn.1980) the Supreme Court held that violation of the time limits set forth in Rule 4.02, subd. 5(1) does not require the automatic exclusion of statements made which have a reasonable relationship to the violation. Rather, the

admissibility of the statements depends on such factors as the reliability of the evidence, the length of the delay, whether the delay was intentional, and whether the delay compounded the effects of other police misconduct. In Wiberg the Supreme Court found a violation of Rule 4.02, subd. 5(1) even though 36 hours had not yet elapsed exclusive of the day of arrest. The court noted that such unexplained delays as occurred in Wiberg should weigh heavily in the trial court's determination of whether to exclude any statements. For the application of this same suppression test to identification evidence see Meyer v. State, 316 N.W.2d 545 (Minn.1982).

"Where the defendant agrees, Rule 4.02, subd. 5(3) provides the procedure for initiating misdemeanor proceedings or gross misdemeanor proceedings under Minn. Stat. §169.121 or Minn. Stat. §169.129 without the necessity of issuing a complaint or obtaining an indictment as is required for felonies and other gross misdemeanors. This is provided to avoid the unnecessary delay for a defendant and to aid a prosecutor in those cases where the defendant may not even desire a complaint if ~~he is~~ sufficiently informed in some other way of the charges ~~against him~~. When a defendant ~~makes his~~ first ~~appearance~~ appears in court following a warrantless ~~misdemeanor~~ arrest in such cases, the clerk shall enter on the records a brief statement (tab charge) of the offense charged, including a citation to the statute, ordinance, rule, regulation or provision of law which the defendant is alleged to have violated. This statement shall be a substitute for the complaint and is sufficient to initiate the ~~misdemeanor~~ proceedings in such cases under Rule 10.01 unless the defendant, ~~his attorney~~ defense counsel or the court requests that a complaint be filed. This provision for tab charges is substantially consistent with present Minnesota law for misdemeanors although under the present statutes the right to a complaint varies from court to court. See Minn. Stat. §487.25, subd. 4, and Minn. Stat. §488A.10, subd. 4 (In the county courts and in Hennepin County Municipal Court, a tab charge is sufficient unless the judge orders or the defendant requests a complaint); Minn. Stat. §488A.27, subd. 4 (In St. Paul a tab charge is sufficient unless the judge orders a complaint); and Minn. Stat. §488.17, subd. 4 (In any other municipal court the tab charge is sufficient where the defendant is in custody when appearing before the court, unless the court orders a complaint)."

17. Comments on Rule 4.02, Subd. 5(3).

Amend the comments on Rule 4 by adding the following new paragraph after the existing seventh paragraph:

"Unless a complaint is requested, Rule 4.02, subd. 5(3) permits the use of a tab charge to initiate a prosecution for gross misdemeanor driving while intoxicated under Minn. Stat. §169.121 or Minn. Stat. §169.129. The provisions concerning tab charges were extended to gross misdemeanor driving while intoxicated proceedings because of concern that such proceedings will not otherwise be prosecuted and completed promptly. When the rules were originally promulgated, there were few gross misdemeanor prosecutions. Due primarily to Minn. Stat. §§169.121 and 169.129, the number of gross misdemeanor prosecutions has increased tremendously. Unfortunately, prosecutorial resources have not increased proportionately and in some jurisdictions prosecutions for gross misdemeanor driving while intoxicated have been delayed substantially pending issuance of complaints. The use of tab charges should get such cases into court promptly. A defendant who wants a complaint may then request it. Otherwise, the proceedings may continue based on the tab charge. All other gross misdemeanors must be charged by complaint or indictment as required by Rules 4.02, subd. 5(2) and 17.01. Except for the use of the tab charge, the procedure for gross misdemeanor prosecutions under Minn. Stat. §169.121 or Minn. Stat. §169.129 is the same as for gross misdemeanors prosecutions under any other statute. If a complaint is requested the appearance under Rule 5 is continued pending issuance of the complaint. The time limit specified in Rule 5.03 for having the initial appearance under Rule 8 does not then begin to run until the complaint is filed. If no valid complaint is filed as required by the rules, the proceedings are dismissed. If a valid complaint is filed or if no complaint is requested, the proceedings continue on under Rule 5 and Rule 8."

18. Comments on Rule 4.

Amend the first sentence of the eighth paragraph of the comments on Rule 4 as follows:

"Under Rule 5.01 a defendant must be advised of ~~his~~ the right to demand a complaint."

19. Comments on Rule 4.

Amend the last sentence of the ninth paragraph of the comments on Rule 4 as follows:

"~~Where the~~ A defendant who is not in custody, ~~he~~ may wish to request a later time to receive the complaint, for ~~his~~ the defendant's convenience and that of the defense counsel and the prosecutor."

20. Comments on Rule 4.02, Subd. 5(3).

Amend the eleventh paragraph of the comments on Rule 4 as follows:

"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 be issued instead of a warrant. If it is impossible to locate the defendant to serve the summons or if ~~he~~ the defendant fails to respond to the summons, a warrant may be issued. (See also Rule 3.01). This restriction is considered justified since it is unfair to subject a defendant to a possibly unnecessary arrest when ~~he~~ the defendant has appeared in court once to answer the minor charge, and, through no fault of ~~his own~~ the defendant, a complaint was not issued at that time."

21. Comments on Rule 4.02, Subd. 5(2).

Amend the last paragraph of the comments on Rule 4 as follows:

"Rule 4.02, subd. 5(2) permits the complaint to be presented either to the judge or judicial officer before whom the defendant will appear or to any judge or judicial officer authorized to issue a warrant of arrest upon the complaint. If the judge or judicial officer to whom the complaint is presented determines that there is probable cause to believe that defendant committed the offense charged, ~~he shall file~~ the complaint shall be filed, and in lieu of a warrant of arrest (which is the present practice), ~~he shall issue~~ an order for detention of the defendant pending further proceedings shall be issued."

22. Rule 5.01. Statement to the Defendant.

Amend this rule as follows:

"Rule 5.01. Statement to the Defendant

~~When a~~ A defendant arrested with or without a warrant or served with a summons or citation ~~appears~~ appearing initially before a judge or judicial officer, ~~he~~ shall be advised of the nature of the charge ~~against him~~. ~~If the~~ A defendant who has not previously received a copy of the complaint, if any, and supporting affidavits and the transcription of any supplementary testimony, ~~he~~ shall be

provided with copies thereof. Upon motion of the prosecuting attorney, the court shall require that the defendant be booked, photographed, and fingerprinted. In cases of felonies and gross misdemeanors, the defendant shall not be called upon to plead.

The judge, judicial officer, or other duly authorized personnel shall advise the defendant substantially as follows:

(a) That ~~he~~ the defendant is not required to say anything or submit to interrogation and that anything ~~he~~ the defendant says may be used against ~~him~~ the defendant in this or in any subsequent proceedings;

(b) That ~~he~~ the defendant has a right to counsel in all subsequent proceedings, including police line-ups and interrogations, and if ~~he~~ the defendant appears without counsel and is financially unable to afford counsel, that counsel will forthwith be appointed without cost to ~~him if he is~~ the defendant charged with an offense punishable upon conviction by incarceration;

(c) That ~~he~~ the defendant has a right to communicate with ~~his~~ defense counsel and that a continuance will be granted if necessary to enable defendant to obtain or speak to counsel;

(d) That ~~he~~ the defendant has a right to a jury trial or a trial to the court;

(e) That if the offense is a misdemeanor, ~~he~~ the defendant may either plead guilty or not guilty, or demand a complaint prior to entering a plea.

(f) That if the offense is a gross misdemeanor punishable under Minn. Stat. §169.121 or Minn. Stat. §169.129, the defendant may demand a complaint prior to entering a plea.

The judge, judicial officer, or other duly authorized personnel may advise a number of defendants at once of these rights, but each defendant shall be asked individually before ~~he is arraigned~~ arraignment whether ~~he~~ the defendant heard and understood these rights as explained earlier."

23. Rule 5.02. Appointment of Counsel.

Amend this rule as follows:

"Rule 5.02. Appointment of Counsel

Subd. 1. Felonies and Gross Misdemeanors. If the defendant is not represented by counsel and is financially unable to afford counsel, the judge or judicial officer shall appoint counsel for ~~him~~ the defendant.

Subd. 2. Misdemeanors. Unless the defendant charged with a misdemeanor punishable upon conviction by incarceration voluntarily waives counsel in writing or on the record, the court shall appoint counsel for ~~him if he~~ the defendant who appears without counsel and is financially unable to afford counsel. The court shall 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 ~~his~~ the defendant's rights. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of ~~his own~~ the defendant's choosing or by assignment.

Notwithstanding the waiver, the court may designate counsel to be available to assist and to consult with a defendant who cannot afford counsel ~~and to consult with him~~ at all stages of the proceedings.

A defendant who proceeds at the arraignment without counsel does not waive ~~his~~ the future right to counsel and the court must inform ~~him~~ the defendant that ~~he~~ the defendant continues to have that right at all stages of the proceeding. Provided that for misdemeanor offenses not punishable upon conviction by incarceration, the court may appoint an attorney for a defendant financially unable to afford counsel when requested by the defendant or interested counsel or when such appointment appears advisable to the court in the interests of justice to the parties.

Subd. 3. Standard of Indigency. A defendant is financially unable to obtain counsel if ~~he is~~ financially unable to obtain adequate representation without substantial hardship for ~~himself~~ the defendant or ~~his~~ the defendant's family.

Subd. 4. Financial Inquiry. An inquiry to determine financial eligibility of a defendant for the appointment of counsel shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the pre-release investigation provided for in Rule 6.02, subd. 3.

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 shall not preclude the appointment of counsel for the defendant. The court may require a defendant, to the

extent ~~of his ability~~ able, to compensate the governmental unit charged with paying the expense of appointed counsel."

24. Rule 5.03. Date of Appearance in District Court; Consolidation of Appearance Under Rule 5 and Rule 8.

Amend the first paragraph of this rule as follows:

"If the defendant is charged with a felony or gross misdemeanor and has not waived ~~his~~ the right to a separate appearance under Rule 8 as provided in this rule, the judge or judicial officer shall set a date for such appearance before the district court having jurisdiction to try the offense charged in accordance with a schedule or other directive established by order of the district court, which appearance date shall not be later than fourteen (14) days after the defendant's initial appearance before such judge or judicial officer under Rule 5."

25. Rule 5.04, Subd. 2. Guilty Plea; Offenses From Other Jurisdictions.

Amend this rule as follows:

"Subd. 2. Guilty Plea; Offenses From Other Jurisdictions. If ~~he~~ the defendant enters a plea of guilty, the presentencing and sentencing procedures provided by these rules shall be followed. Following a plea of guilty, the defendant may ~~be permitted upon his or his attorney's~~ request permission, to plead guilty to other misdemeanor offenses committed within the jurisdiction of other courts in the state pursuant to Rule 15.10 ~~provided that such plea has been approved by the prosecuting attorney of the governmental unit in which the offenses are or could be charged. Prior to the acceptance of such a plea, the defendant shall be tab charged with the offense pursuant to Rule 4.02, subd. 5(3). Entry of such a plea constitutes a waiver of venue.~~

~~Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction shall be remitted by the clerk of the court imposing the fine to the clerk of the court which originally had jurisdiction over the offense. The clerk of the court of original jurisdiction upon receiving the remittance shall disburse it as required by law for all other similar fines.~~"

26. Rule 5.04, Subd. 3. Not Guilty Plea and Jury Trial.

Amend this rule as follows:

"Subd. 3. Not Guilty Plea and Jury Trial. If the defendant enters a plea of not guilty to a charge on which ~~he is~~ entitled to a jury trial, ~~he~~ the defendant shall be asked ~~whether he wishes~~ to exercise or waive that right. The defendant may waive jury trial either personally in writing or orally on the record in open court. If the defendant fails to waive or demand a jury trial, a jury trial demand shall be entered in the record."

27. Rule 5.05. Bail or Release.

Amend this rule as follows:

"Rule 5.05. Bail or Release

The judge or judicial officer shall set and advise the defendant of the conditions under which ~~he~~ the defendant may be released under these rules for appearance."

28. Rule 5.06. Record.

Amend this rule as follows:

"Rule 5.06. Record

Minutes of the proceedings shall be kept unless the judge or judicial officer directs that a verbatim record thereof shall be made, and provided that any plea of guilty to an offense punishable by incarceration shall comply with the requirements of Rule 13.05 and Rule ~~15.03~~ 15.09."

29. Comments on Rule 5.01.

Amend the second paragraph of the comments on Rule 5 as follows:

"Rule 5.01 sets forth the statements and advice to be given to the defendant upon ~~his~~ the initial court appearance. Similar provisions appear in ABA Standards, Pre-Trial Release, 4.3 (Approved Draft, 1968), F.R.Crim.P. 5(c), and ALI Model Code of Pre-Arraignment Procedure § 310.1(4)(a) (T.D. #5, 1972)."

30. Comments on Rule 5.01.

Amend the last sentence of the third paragraph of the comments as follows:

"Of course, in misdemeanor cases and in gross misdemeanor cases under Minn. Stat. §169.121 or Minn. Stat. §169.129

where no complaint has been issued and prosecution is pursuant to a tab charge this requirement does not apply."

31. Comments on Rule 5.01.

Amend the fourth paragraph of the comments on Rule 5 as follows:

"In misdemeanor cases this statement as to a defendant's rights may be combined with the questioning required under Rule 15.02 prior to acceptance of a guilty plea. In order to save time and avoid repetition, the judge or judicial officer may advise a number of defendants at the same time of these rights, but the statement must be recorded and each defendant upon approaching the court must be asked on the record whether ~~he~~ the defendant has heard and understood the rights explained earlier."

32. Comments on Rule 5.02, Subd. 1.

Amend the seventh and eighth paragraphs of the comments as follows:

"Under Rule 5.02, subd. 1, counsel must be appointed for a defendant financially unable to afford counsel in a felony or gross misdemeanor case even if a defendant exercises ~~his~~ the constitutional right under Faretta v. California, 422 U.S. 806 (1975), to refuse the assistance of counsel and represent herself or himself. In such a situation the appointed counsel would remain available for assistance and consultation if requested by the defendant.

"As suggested in Von Moltke v. Gillies, 332 U.S. 708 (1948) to ensure a knowing and intelligent waiver of counsel, the court should make a penetrating and comprehensive examination of the defendant as to ~~his~~ the defendant's comprehension of the

(1) Nature of the charges;

(2) Statutory offenses included within them;

(3) The range of allowable punishments;

(4) The possible defenses;

(5) The possible mitigating circumstances; and

(6) All other facts essential to a broad understanding of the consequences of the waiver."

33. Comments on Rule 5.02.

Amend the twelfth paragraph of the comments on Rule 5 as follows:

"Also, despite a waiver of counsel at arraignment, the defendant continues to have the right to counsel at all further stages of the proceedings, and the court must so inform ~~him~~ the defendant. See ABA Standards, Providing Defense Services, 7.3 (Approved Draft, 1968)."

34. Comments on Rule 5.02.

Amend the first sentence of the thriteenth paragraph of the comments on Rule 5 as follows:

"For misdemeanors not punishable by incarceration, the court may, upon request of the defendant or interested counsel or upon the court's ~~own motion~~ initiative when in the interests of justice to the parties, appoint an attorney to represent the defendant."

35. Comments on Rule 5.02, Subd. 3.

Amend the "Standards" in the comments on Rule 5 as follows:

"STANDARDS

(1) A defendant will be presumed to be financially unable to afford counsel if:

(a) ~~his~~ the defendant's cash assets are less than $300.00 when entitled to only a court trial; or

(b) ~~his~~ the defendant's cash assets are less than $500.00 when entitled to a jury trial; and

(c) ~~his~~ the defendant's current weekly net income does not exceed forty times the federal minimum hourly wage as prescribed by federal law in effect at the time, if ~~he~~ the defendant is unmarried and without dependents; or,

(d) ~~his~~ the defendant's current weekly net income and that of ~~his~~ the defendant's spouse do not exceed sixty times the federal minimum hourly wage as prescribed by federal law in effect at the time, if ~~he~~ the defendant is married and without dependents. In

determining the amounts specified under either section (c) or section (d), for each dependent the amount shall be increased by $25.00 per week.

(2) A defendant who has cash assets or income exceeding the amounts specified in paragraph (1) shall not be presumed to be financially able to obtain counsel. The determination shall be made by the court as a practical matter, taking into account such other factors as the defendant's length of employment or unemployment, prior income, the value and nature of ~~his~~ the defendant's assets, number of children and other family responsibilities, number and nature of debts arising from any source, the amount customarily charged by members of the practicing bar for representation of the type in question, and any other relevant factor.

(3) In determining whether a defendant is financially able to obtain adequate representation without substantial hardship to ~~himself~~ the defendant or ~~his~~ the defendant's family:

(a) cash assets include those assets which may be readily converted to cash by sale or loan without jeopardizing the defendant's ability to maintain ~~his~~ a home or employment. A single family automobile shall not be considered a cash asset.

(b) the fact that the defendant has posted or can post bail is irrelevant except insofar as it represents a cash asset belonging to ~~him~~ the defendant which could be assigned to retain counsel. The amount of bail which is or can be posted shall not in itself render a defendant financially able to obtain counsel.

(c) the fact that the defendant is employable but unemployed shall not be in itself proof ~~that he is financially able~~ of financial ability to obtain counsel without such substantial hardship ~~to himself or his family~~.

(d) the fact that parents or other relatives of the defendant have the financial ability to obtain counsel for the defendant is irrelevant except under the following circumstances:

(i) where the defendant is unemancipated, under the age of 21 years, living with ~~his~~ parents or other relatives, and such parents or other relatives have the clear ability to obtain counsel; or

(ii) where the parents or other relatives of the defendant have the financial ability to obtain counsel for the defendant but are unwilling to do so only because of the relatively minor nature of the charge."

36. Comments on Rule 5.02, Subd. 3.

Amend the paragraph after the "Standards" in the comments on Rule 5 as follows:

"Under part (1) of the recommended standards a defendant will be presumed to be financially unable to retain ~~his own attorney~~ defense counsel and counsel shall be appointed ~~for him~~ when ~~his~~ the defendant's income and assets fail to meet the specified minimum levels. The minimum income level referred to in the recommended standards is a weekly "net" figure and is keyed to the federal minimum hourly wage in effect at the time the appointment of counsel is requested. By reference to the minimum wage law, the standard will hopefully provide a realistic gauge of a defendant's ability to hire counsel which will vary with the economy. As made clear by part (2) of the recommended standard, part (1) provides a presumption of indigency and is not to be taken as indicating that a defendant with a higher income and assets must obtain ~~his own attorney~~ private counsel. A defendant with a higher income or assets should still be appointed counsel if ~~he is~~ unable under part (2) to obtain adequate representation without substantial hardship to ~~himself~~ the defendant or ~~his~~ the defendant's family. In making this determination the court shall consider the factors listed in parts (2) and (3) of the standard, as well as any other relevant factors."

37. Comments on Rule 5.02, Subd. 5.

Amend the paragraph in the comments on Rule 5 concerning Rule 5.02, subd. 5 as follows:

"Rule 5.02, subd. 5 provides that the ability of a defendant to pay part of the cost of adequate representation when charges are pending ~~against him~~ shall not preclude the court from appointing counsel ~~for him~~. This provision is included to make clear that counsel can be appointed for the person of moderate means who would be subject to substantial financial hardship if forced to pay the full cost of adequate representation. In such circumstances the court may require the defendant to the extent ~~of his ability~~ able to compensate the governmental unit charged with paying the expense of the appointed counsel."

38. Comments on Rule 5.03.

Amend the first paragraph of the comments on Rule 5.03 as follows:

"Under Rule 5.03, if the defendant is charged with a felony or gross misdemeanor, a date shall be fixed by the judge or judicial officer for the defendant's appearance in the district court under Rule 8, where ~~he~~ the defendant will be arraigned upon the complaint or, where permitted, the tab charge (Rules 8.01, 12), and if a ~~he does not then plead~~ guilty plea is not then entered, a date will be fixed by the district court (Rule 8.04) for the Omnibus Hearing provided for by Rule 11."

39. Comments on Rule 5.03.

Amend the fourth paragraph of the comments on Rule 5.03 as follows:

"When the appearances are consolidated under Rule 5.03, 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 not later than 14 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 ~~own motion~~ initiative. Also, the notice of evidence and identification procedures required by Rule 7.01 must be given at or before the consolidated hearing."

40. Comments on Rule 5.04, Subd. 2.

Amend the paragraph of the comments concerning Rule 5.04, subds. 2 and 3 as follows:

"Following a plea of guilty a defendant or ~~his attorney~~ defense counsel under Rule 5.04, subd. 2 may request permission for the defendant to enter a plea of guilty to any other misdemeanor committed within the state which is under the jurisdiction of another court. The procedure for entering such pleas is set forth in Rule 15.10 . Also see the comments on that rule. If the defendant has permission to enter the plea from the prosecuting attorney of the governmental unit authorized to prosecute the offense, then the court may accept the plea provided it is otherwise

proper. Before accepting the plea, ~~a~~ the defendant must be charged with the offense, but that could be done simply by a tab charge ~~of the offense shall be entered on the record~~ pursuant to Rule 4.02, subd. 5(3). ~~It is not necessary that the defendant has been charged in the court which would otherwise have jurisdiction over the offense.~~ By entering a plea under Rule 5.04, subd. 2 the defendant waives any right to object to the venue of the court which is accepting the plea. Following acceptance of the plea, the court has the power to sentence the defendant just as if it originally had jurisdiction over the offense. This rule ~~is~~ was originally taken from ABA Standards, Pleas of Guilty, 1.2 (Approved Draft, 1968) and permits a defendant to dispose of a number of ~~minor~~ charges pending against ~~him~~ the defendant throughout the state without the necessity and expense of being taken to each court personally while in custody. If any fines are collected upon entry of a guilty plea to an offense arising in another jurisdiction, the money is to be forwarded to the clerk of the court which originally had jurisdiction over the offense. Disbursement of such fines by the clerk of the court of original jurisdiction shall be as if the plea had actually been entered and the fine collected in the court of original jurisdiction. As to disbursement of such fines see Minn.Stat. §§ 487.31 and 487.33, subds. 1 and 5 (County Courts); 488A.03, subd. 6(a) and (d) and 488A.03, subd. 11(d) (Hennepin County Municipal Court); and 488A.20, subd. 4 (Ramsey County Municipal Court).

"~~If the~~ A defendant ~~pleads~~ pleading not guilty ~~and~~ who is entitled to a jury trial ~~he~~ shall be asked under Rule 5.04, subd. 3 ~~whether he wishes~~ to exercise or waive that right. The defendant with the approval of the court has an absolute right to waive a jury trial under Rules 5.04, subd. 3 and 26.01, subd. 1(2)(a) in a misdemeanor case. ~~If the~~ A prosecutor who objects to the judge selected to try the case ~~he~~ may file ~~an affidavit of prejudice as permitted under~~ a notice to remove the judge. Rule 26.03, subd. 13; State v. Kraska, 294 Minn. 540, 201 N.W.2d 742 (1972). See also Rule 26.01, subd. 1(2)(b) as to waiver of jury trial when there is prejudicial publicity and Rule 26.01, subd. 1(3) as to withdrawal of the waiver. Rule 5.04, subd. 3 permits a defendant to waive a jury trial either in writing or orally in open court on the record. This is contrary to Minn.Stat. § 631.01 which permitted only a written waiver. See Rule 26.01(1) as to a misdemeanor defendant's right to a jury trial and Rule 6.06 as to the time within which a trial must be held on a misdemeanor charge."

41. Comments on Rule 5.

Amend numbers 2 and 3 of the timetable for felonies and

gross misdemeanors in the comments on Rule 5 as follows:

"2. Service of Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) notice (Rule 7.01) on the defendant on or before the date of ~~his~~ the appearance in the district court under Rule 8.

3. Appearance in the district court under Rule 8 (within 14 days after ~~his~~ the initial appearance under Rule 5 unless the appearances under Rules 5 and 8 are consolidated pursuant to Rule 5.03)."

42. Rule 6.01, Subd. 5. Persons in Need of Care.

Amend this rule as follows:

"Subd. 5. Persons in Need of Care. Notwithstanding the issuance of a citation, a law enforcement officer may take the cited person to an appropriate medical facility if ~~he~~ that person appears mentally or physically ~~unable to care for himself~~ incapable of self care."

43. Rule 6.02, Subd. 1. Conditions of Release.

Amend this rule as follows:

"Subd. 1. Conditions of Release. Any person charged with an offense shall be released without bail pending ~~his~~ the first court appearance when ordered by the prosecuting attorney, the judge of a district court, or by any person designated by the court to perform that function. ~~At his~~ Upon appearance before a judge, judicial officer, or court, a person so charged shall be ordered released pending trial or hearing on ~~his~~ personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless the court, judge or judicial officer determines, in the exercise of ~~his~~ discretion, that such a release will be inimical of public safety or will not reasonably assure the appearance of the person as required. When such a determination is made, the court, judge or judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:

(a) Place the person in the care and supervision of a designated person or organization agreeing to supervise ~~him~~ the person;

(b) Place restrictions on the travel, association or place of abode during ~~his~~ the period of release;

(c) Require the execution of an appearance bond in an amount set by the court with sufficient solvent sureties, or the deposit of cash or other sufficient security in lieu thereof; or

(d) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

In any event, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain ~~his~~ release.

The defendant's release shall be conditioned on ~~his~~ appearance at trial or hearing, including the Omnibus Hearing, evidentiary hearing and the pretrial conference prescribed by these rules, or at the taking of any deposition that may be ordered by the court."

44. Rule 6.02, Subd. 2. Determining Factors.

Amend this rule as follows:

"Subd. 2. Determining Factors. In determining which conditions of release will reasonably assure such appearance, the judge, judicial officer or court shall on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, ~~the~~ length of ~~his~~ residence in the community, ~~his~~ record of convictions, ~~his~~ record of appearance at court proceedings or flight to avoid prosecution, and the safety of any other person or of the community."

45. Rule 6.03. Violation of Conditions of Release.

Amend this rule as follows:

"Rule 6.03. Violation of Conditions of Release

Subd. 1. Warrant. Upon an application of the prosecuting attorney alleging that a defendant has violated the conditions of ~~his~~ release, the judge, judicial officer or court that released the defendant may issue a warrant directing that the defendant be arrested and taken forthwith before such judge, judicial officer or court. A summons directing the defendant to appear before such judge,

judicial officer or court at a specified time shall be issued instead of a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown.

Subd. 2. Arrest Without Warrant. A law enforcement officer having probable cause to believe that a released defendant has violated the conditions of ~~his~~ release may, if it is impracticable to secure a warrant or summons as provided in this rule, arrest the defendant and take ~~him~~ the defendant forthwith before such judge, judicial officer or court. In a misdemeanor case, a citation shall be issued in lieu of an arrest or continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or that there is a substantial likelihood that the defendant will fail to respond to the citation.

Subd. 3. Hearing. After hearing and upon finding that the defendant has violated conditions imposed on ~~his~~ release, the judge, judicial officer or court shall continue the release upon the same conditions or impose different or additional conditions for defendant's possible release as provided for in Rule 6.02, subd. 1.

Subd. 4. Commission of Crime. When it is shown that a complaint has been filed or indictment returned charging a defendant with the commission of 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 ~~his~~ possible release as provided for in Rule 6.02, subd. 1."

46. Rule 6.06. Trial Date in Misdemeanor Cases.

Amend this rule as follows:

"Rule 6.06. Trial Date in Misdemeanor Cases

A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, ~~the defendant shall be tried~~ the trial shall be commenced within sixty (60) days from the date of the demand unless good cause is shown upon ~~by~~ the ~~prosecution~~ prosecuting attorney's or ~~defendant~~ the defendant's motion or upon the court's initiative why ~~he~~ the defendant should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea. Where the defendant is in custody, ~~he shall be~~

~~tried~~ trial shall be commenced within ten (10) days of ~~his~~ demand and if not so ~~tried~~ commenced, ~~he~~ the defendant shall be released subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1."

47. Comments on Rule 6.

Amend the first paragraph of the comments on Rule 6 as follows:

"In misdemeanor cases a citation ordinarily must be issued if the misdemeanor charged is not punishable by incarceration. It is the opinion of the Advisory Committee that where possible, a person should not be taken into custody for an offense for which ~~he~~ the person could not be incarcerated even if found guilty."

48. Comments on Rule 6.01.

Amend the fourth, fifth, and sixth paragraph of the comments on Rule 6 as follows:

"The initial determination of whether to issue a citation is to be made by the arresting or detaining officer in the field from the information available ~~to him~~ on the spot. If ~~he~~ that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make ~~his~~ a determination from all the information that may then be available ~~to him~~, including any additional information disclosed by further interrogation and investigation.

"In making their determination of whether to issue a citation, the officers may take into account the defendant's place and length of residence, ~~his~~ family relationships, references, present and past employment, ~~his~~ criminal record, past history of response to criminal process, and such facts as have a bearing on the likelihood of harmful or criminal conduct. (See ABA Standards, Pre-Trial Release 2.2, 2.3 (Approved Draft, 1968).)

"By Rule 6.01, subd. 1(1), if a citation is not issued and an arrest is made, the officer shall report to the court ~~his~~ the reasons for not issuing it, but the failure to issue a citation is not jurisdictional. The reasons for failing to issue a citation should be specified particularly for the defendant involved. It is not sufficient to simply use a checklist or only the words of the rule to justify the failure to issue a citation. Under these rules an arrest for a misdemeanor should be considered the exception rather than the normal practice."

49. Comments on Rule 6.02, Subd. 1.

Amend the fifteenth, sixteenth and seventeenth paragraphs of the comments on Rule 6 as follows:

"Rule 6.02, subd. 1 specifying the conditions of release that may be imposed upon a defendant at ~~his~~ the first appearance before a judge, judicial officer, or court (Rule 5.05, See also Rules 6.02, subd. 4, 19.05) is taken from the Bail Reform Act of 1966, 18 U.S.C. §§ 3141-3152, and in general follows ABA Standards, Pre-Trial Release 5.1, 5.3 (Approved Draft, 1968). If conditions of release are endorsed on the warrant (Rule 3.02, subd. 1), the defendant should be released on meeting those conditions.

"Rule 6.02, subd. 1 substantially follows the language of § 3146(a). The rule directs that the defendant shall be released on ~~his~~ personal recognizance, or on order to appear, or on the execution of an unsecured appearance bond unless the judge or judicial officer determines, in the exercise of discretion, that release by one of those methods will not reasonably assure the defendant's appearance.

"Release on "personal recognizance" is a release without bail upon defendant's written promise to appear at appropriate times. (See ABA Standards, Pre-Trial Release 1.4(d) (Approved Draft, 1968).) An "Order to Appear" is an order issued by the court releasing the defendant from custody or continuing ~~him~~ the defendant at large pending disposition of ~~his~~ the case, but requiring ~~him~~ the defendant to appear in court or in some other place at all appropriate times. (See ABA Standards, Pre-Trial Release, 1.4(c) (Approved Draft, 1968).)"

50. Comments on Rule 6.02.

Amend the comments on Rule 6 by adding a new paragraph after the existing nineteenth paragraph as follows:

"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 ten 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."

51. Comments on 6.02, Subd. 1.

Amend the twentieth and twenty-first paragraph of the comments on Rule 6 as follows:

"Rule 6.02, subd. 1 requires that even though the court sets conditions other than money bail upon which the defendant may be released, or even though the court prescribes other conditions in addition to money bail, the court shall also fix the amount of money bail (secured by cash, property, or qualified sureties) without any other conditions upon which the defendant may obtain ~~his~~ release. The Advisory Committee was of the opinion that this is required by the defendant's constitutional right to bail. Minn.Const. Art. 1, § 5 makes all persons bailable by sufficient sureties for all offenses.

"Under Rule 6.02, subd. 1, defendant's release, in whatever form, shall be conditioned on ~~his~~ appearance at trial or hearing, including the Omnibus Hearing under Rule 11, and at the taking of depositions under Rule 21.01."

52. Comments on Rule 6.03.

Amend the fifth sentence in the twenty-sixth paragraph of the comments on Rule 6 as follows:

"If the defendant is unable to post the increased bail or to meet alternative conditions of release, ~~he~~ the defendant may be kept in custody."

53. Comments on Rule 6.03.

Amend the twenty-eighth and twenty-ninth paragraphs of the comments on Rule 6 as follows:

"Minn.Stat. § 629.63 (1971) providing for surrender of the defendant by ~~his bondsman~~ 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 ~~his bondsman~~ such surety money bail shall be set, is superseded.

"Rule 6.03, subd. 4 follows in substance ABA Standards, Pre-Trial Release, 5.8 (Approved Draft, 1968). The rule provides for a review of release conditions when the defendant has been subsequently charged by complaint or indictment with a crime (other than that upon which ~~he was~~

initially released). The rule provides that the court with jurisdiction over the prior charge shall review the release conditions upon that charge and may continue or revise them (governed by the considerations set forth in Rule 6.02, subds. 1 and 2)."

54. Comments on Rule 6.06.

Amend the last paragraph of the comments on Rule 6 as follows:

"Rule 6.06 provides that in misdemeanor cases a defendant shall be brought to trial within 60 days after demand therefor is made by the prosecuting attorney or defendant, unless good cause is shown for a delay, but regardless of a demand the defendant shall be tried as soon as possible. The trial may be postponed upon request of the prosecuting attorney or the defendant, or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. As to sanctions for violation of these 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). In misdemeanor cases Rule 6.06 supersedes Minn. Stat. §611.04 (1971) ~~requiring~~ which required the defendant to be brought to trial at the next term of court. As to the right to a speedy trial generally, see the comments to Rule 11.10."

55. Rule 7.01. Notice of Evidence and Identification Procedures.

Amend this rule as follows:

"Rule 7.01. Notice of Evidence and Identification Procedures

In any case where a jury trial is to be held, when the prosecution has (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) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney shall notify the defendant or ~~his~~

defense counsel of such evidence and identification procedures. In felony and gross misdemeanor cases notice shall be given in writing on or before the date set for the defendant's initial appearance in the district court as provided by Rule 5.03. In misdemeanor cases, notice shall 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 seven (7) days before trial if no pretrial conference is to be held.

Such written notice may be given either personally or by ordinary mail to the defendant's or ~~his~~ defense counsel's last known residential or business address or by leaving it at such address with a person of suitable age and discretion then residing or working there."

56. Rule 7.02. Notice of Additional Offenses.

Amend this rule as follows:

"Rule 7.02. Notice of Additional Offenses

The prosecuting attorney shall notify the defendant or ~~his~~ defense counsel in writing of any additional offenses, the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. In cases of felonies and gross misdemeanors, the notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offenses become known to the prosecuting attorney. In misdemeanor cases, the notice shall be given at or before the pretrial conference under Rule 12 if held or as soon thereafter as the offense becomes known to the prosecuting attorney. If no pretrial conference is held, then the notice shall be given at least seven (7) days before trial or as soon thereafter as known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which ~~he~~ the defendant has been previously prosecuted or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged against defendant arose."

57. Rule 7.03. Completion of Discovery.

Amend this rule as follows:

"Rule 7.03. Completion of Discovery

Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecution and defendant shall complete the discovery that is required by

Rule 9.01~~, subds. 1 and 2~~ and Rule 9.02 to be made without the necessity of an order of court.

In misdemeanor cases, without order of the court the prosecuting attorney on request of the defendant or ~~his attorney~~ defense counsel shall, prior to arraignment or at any time before trial, permit the defendant or ~~his attorney~~ defense counsel to inspect the police investigatory reports. Any other discovery shall be by consent of the parties or by motion to the court."

58. Comments on Rule 7.

Amend the first four paragraphs of the comments on Rule 7 as follows:

"Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) of evidence obtained from the defendant and of identification procedures shall be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after ~~his~~ the first appearance in the court under Rule 5) in order that ~~he~~ the defendant may determine at the time of ~~his~~ the appearance in the district court under Rule 8 whether to waive or demand a Rasmussen hearing (Rule 8.03). If ~~he~~ the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) 14 days later.

"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 5.04, 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 ~~his~~ 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 pre-trial conference, if held, or at least seven days before trial if no pre-trial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held. This continues present law under City of St. Paul v. Page, 285 Minn. 374, 173 N.W.2d 460 (1969). Even where no notice is required, however, it is anticipated that the discovery permitted by Rule 7.03 will give the defendant and ~~his attorney~~ defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.

"The notice required by Rule 7.01 must be in writing in felony and gross misdemeanor cases and may be either in writing or oral on the record in misdemeanor cases. Any written notice may be delivered either personally or by ordinary mail to the defendant's or ~~his~~ defense counsel's last known residential or business address or by leaving it at such address with a person of suitable age and discretion then residing or working there. If the notice 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 (State v. Spreigl, 272 Minn. 488, 139 N.W.2d 167 (1965), State v. Billstrom, ~~275~~ 276 Minn. ~~525~~ 174, 149 N.W.2d 281 (1967)) of additional offenses 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. (Rule 11.04.) If ~~he~~ the prosecuting attorney learns of any such offenses after the Omnibus Hearing, ~~he~~ the prosecuting attorney shall immediately give notice thereof to the defendant."

59. Comments on Rule 7.03.

Amend the sixth paragraph of the comments on Rule 7 as follows:

"Rule 7.03, in misdemeanor cases, requires the prosecutor upon request of the defendant or ~~his attorney~~ defense counsel at any time before trial to permit inspection of the police investigatory reports in the case. Under this rule the prosecutor should reveal not only the reports physically in ~~his~~ the prosecutor's possession, but also those concerning the case which are yet in the possession of the police. This disclosure of investigatory reports is already the practice of many prosecutors and in most misdemeanor cases should be sufficient discovery. This type of discovery is particularly important in misdemeanor cases where prosecution can be initiated upon a tab charge (Rule 4.02, subd. 5(3)) without a complaint or indictment. A defendant, of course, may request a complaint under Rule 4.02, subd. 5(3) to be better informed of the charges ~~against him~~, but it is expected that complaints will seldom be requested when the investigatory reports are disclosed to the defendant."

60. Rule 8.

Amend the title of this rule as follows:

"RULE 8. DEFENDANT'S INITIAL APPEARANCE BEFORE THE DISTRICT COURT FOLLOWING THE COMPLAINT OR TAB CHARGE IN FELONY AND GROSS MISDEMEANOR CASES"

61. Rule 8.01. Place of Appearance and Arraignment.

Amend this rule as follows:

"Rule 8.01. Place of Appearance and Arraignment

The defendant's initial appearance following the complaint or, for a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §196.129, a tab charge under this rule shall be held in the district court of the judicial district where the alleged offense was committed.

Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, the defendant shall be arraigned upon the complaint or the complaint as it may be amended or, for gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129, the tab charge, but may only enter a plea of guilty at that time. If the defendant does not wish to plead guilty, no other plea ~~he shall not be~~ called for ~~upon to enter any other plea~~ and the arraignment shall be continued until the Omnibus Hearing when pursuant to Rule 11.10 ~~he~~ the defendant shall plead to the complaint or the complaint as amended or such tab charge or be given additional time within which to plead. If the offense charged in the complaint is 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 presentation of the case to the grand jury shall 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 shall be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 shall be held as provided by Rule 19.04, subd. 5."

62. Rule 8.02. Plea of Guilty.

Amend this rule as follows:

"Rule 8.02. Plea of Guilty

At an initial appearance under this rule, the defendant may enter a plea of guilty to a felony, a gross misdemeanor, or a misdemeanor as permitted under Rule 15. If ~~he~~ the defendant enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be

followed."

63. Rule 8.04. Plea and Time and Place of Omnibus Hearing.

Amend part (c) of this rule as follows:

"(c) The Omnibus Hearing provided for by Rule 11 shall be scheduled for a date not later than fourteen (14) days after the defendant's initial appearance before the court under this rule. The court may extend such time for good cause related to the particular case upon motion of the prosecuting attorney or defendant or upon the court's ~~own motion~~ initiative."

64. Comments on Rule 8.

Amend the first three paragraphs of the comments on Rule 8 as follows:

"Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, upon the defendant's initial appearance before the court under this rule following a complaint charging a felony or gross misdemeanor or a tab charge charging a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129 (within 14 days after the ~~his~~ first appearance under Rule 5), ~~he~~ the defendant shall, upon ~~his~~ request, be permitted to plead guilty to the complaint, tab charge or amended complaint (See Rules 3.04, subd. 2; 17.05) as provided by Rule 15. At this stage of the proceeding, the tab charge or complaint which was filed in the court, or that complaint as it may be amended (Rule 17.05) or superseded (Rule 3.04, subd. 2), takes the place of the information under existing Minnesota law (Minn.Stat. §§628.29-629.33 (1971)) and provides the basis for the court's jurisdiction over the prosecution and the offenses charged in the complaint or the tab charge.

"If the defendant pleads guilty ~~to the complaint~~ the procedures provided by Rule 15 shall be followed.

"The defendant is not required to enter a plea upon his the appearance in court under Rule 8. ~~He~~ The defendant may, however, plead guilty."

65. Comments on Rule 8.04.

Amend the seventh paragraph of the comments on Rule 8 as follows:

"The Omnibus Hearing shall be ~~scheduled~~ commenced not later than 14 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. (Rule 8.04). If the time is extended, the Omnibus Hearing must still be completed and the issues decided within 30 days after the defendant's initial appearance before the court under Rule 8 unless extended by the Court for good cause related to the particular case. See Rules 11.04 and 11.07 and the comments to Rule 11."

66. Rule 9.01. Disclosure by Prosecution.

Amend this rule as follows:

"Rule 9.01. Disclosure by Prosecution

Subd. 1. Disclosure by Prosecution Without Order of Court. Without order of court and except as provided in Rule 9.01, subd. 3, the prosecuting attorney on request of defense counsel shall, before the date set for Omnibus Hearing provided for by Rule 11, allow access at any reasonable time to all matters within the prosecuting attorney's possession or control which relate to the case and make the following disclosures:

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

(a) The prosecuting attorney shall disclose to defense counsel the names and addresses of the persons ~~whom he intends to call~~ intended to be called as witnesses at the trial together with their prior record of convictions, if any, within ~~his~~ the prosecuting attorney's actual knowledge. ~~He~~ The prosecuting attorney shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within the prosecuting attorney's ~~his~~ knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents.

(b) The fact that the prosecution has supplied the name of a trial witness to defense counsel shall not be commented on in the presence of the jury.

(c) If the defendant is charged by indictment, the prosecuting attorney shall disclose to defense counsel the names and addresses of the witnesses who testified before the grand jury in the case against the defendant.

(d) The prosecuting attorney shall disclose to defense counsel the names and the addresses of persons having information relating to the case.

(2) Statements ~~of Defendants and Accomplices~~. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any relevant written or recorded statements ~~made by defendants and accomplices~~ which relate to the case within the possession or control of the prosecution, the existence of which is known by the prosecuting attorney, and shall provide defense counsel with the substance of any oral statements ~~made by defendants and accomplices, whether before or after arrest,~~ which ~~the prosecution intends to offer in evidence at the trial~~ relate to the case.

(3) Documents and Tangible Objects. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce books, grand jury minutes or transcripts, law enforcement officer reports, reports on prospective jurors, papers, documents, photographs and tangible objects which ~~the prosecuting attorney intends to introduce in evidence at the trial, or which were obtained from or belong to the defendant, or concerning which the prosecuting attorney intends to offer evidence at the trial,~~ relate to the case and the prosecuting attorney shall also permit defense counsel to inspect and photograph buildings or places ~~concerning which the prosecuting attorney intends to offer evidence at the trial~~ which relate to the case.

(4) Reports of Examinations and Tests. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made in connection with the particular case. The prosecuting attorney shall allow the defendant to have reasonable tests made. If a scientific test or experiment of any matter, except those conducted under Minn. Stat. Ch. 169, may preclude any further tests or experiments, the prosecuting attorney shall give the defendant reasonable notice and an opportunity to have a qualified expert observe the test or experiment.

(5) Criminal Record of Defendant and Defense Witnesses. The prosecuting attorney shall inform defense counsel of the records of prior convictions of the defendant and of any defense witnesses disclosed under Rule 9.02, subd. 1(3)(a) that are known to the prosecuting attorney provided the defense counsel informs the prosecuting attorney of any such records known to the defendant.

(6) Exculpatory Information. The prosecuting attorney shall disclose to defense counsel any material or information within ~~his~~ the prosecuting attorney's possession and control that tends to negate or reduce

the guilt of the accused as to the offense charged.

(7) Scope of Prosecutor's Obligations. The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of the prosecution ~~his~~ 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 ~~his~~ the prosecuting attorney's office.

Subd. 2. Discretionary Disclosure Upon Order of Court.

(1) Matters Possessed by Other Governmental Agencies.

Upon motion of the defendant, the court for good cause shown shall require the prosecuting attorney, except as provided by Rule 9.01, subd. 3, to assist the defendant in seeking access to specified matters relating to the case which are within the possession or control of an official or employee of any governmental agency, but which are not within the control of the prosecuting attorney. The prosecuting attorney shall use diligent good faith efforts to cause the official or employee to allow the defendant access at any reasonable time and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made.

(2) Nontestimonial Evidence from Defendant on Defendant's Motion.

Upon motion of the defendant who has been arrested, cited or charged under these rules, the court for good cause shown may require the prosecuting attorney to provide for defendant to participate in a lineup, to speak for identification by witnesses or to participate in other procedures which would require a court order to accomplish.

(3) Other Relevant Material.

Upon motion of the defendant ~~with notice to the prosecuting attorney~~, the trial court at any time before trial may, in its discretion, require the prosecuting attorney 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 the 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 shall inspect and preserve any such relevant material and information.

Subd. 3. Information Non-Discoverable. The following information shall not be 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 that they contain the opinions, theories or conclusions of the prosecuting attorney or members of ~~his~~ the prosecution staff or officials or official agencies participating in the prosecution.

(b) Reports. Except as provided in Rules 9.01, subd. 1(1) to (6), reports, memoranda or internal documents made by the prosecuting attorney or members of ~~his~~ the prosecution staff or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

(2) Prosecution Witnesses Under Prosecuting Attorney's Certificate. The information relative to the witnesses and persons described in Rules 9.01, subd. 1(1), (2) shall not be subject to disclosure if the prosecuting attorney files a written certificate with the trial court that to do so may endanger the integrity of a continuing investigation or subject such witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses or persons are sworn to testify at the trial."

67. Rule 9.02. Disclosure by Defendant.

Amend this rule as follows:

"Rule 9.02. Disclosure by Defendant

Subd. 1. Information Subject to Discovery Without Order of Court. Without order of court, the defendant on request of the prosecuting attorney shall, before the date set for the Omnibus Hearing provided for by Rule 11, make the following disclosures:

(1) Documents and Tangible Objects. The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce books, papers, documents, photographs, and tangible objects which the defendant intends to introduce in evidence at the trial or concerning which the defendant intends to offer evidence at the trial, and shall also permit the prosecuting attorney to inspect and reproduce reports on prospective jurors and to inspect and photograph buildings or places concerning which the defendant intends to offer evidence at trial.

(2) Reports of Examinations and Tests. The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular case within the possession or control of the defendant which ~~he~~ the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to ~~his~~ testimony of the witness.

(3) Notice of Defense and Defense Witnesses and Criminal Record.

(a) Notice of Defense. The defendant shall inform the prosecuting attorney in writing of any defense, other than that of not guilty, on which the defendant intends to rely at the trial, including but not limited to the defense of self-defense, entrapment, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, defense under Minn.Stat. § 609.035, or intoxication. The defendant shall supply the prosecuting attorney with the names and addresses of persons whom the defendant intends to call as witnesses at the trial together with their record of convictions, if any, within ~~his~~ the defendant's actual knowledge.

~~If the~~ A defendant who gives notice ~~that he intends~~ of intent to rely on the defense of mental illness or mental deficiency ~~he~~ shall also notify the prosecuting attorney ~~whether he also intends to~~ of any intent to additionally rely on the defense of not guilty.

(b) Statements of Defense and Prosecution Witnesses. The defendant shall permit the prosecuting attorney to inspect and reproduce any relevant written or recorded statements of the persons whom the defendant intends to call as witnesses at the trial and also statements of prosecution witnesses obtained by

the defendant, defense counsel, or persons participating in the defense, and which are within the possession or control of the defendant and shall permit the prosecuting attorney to inspect and reproduce any written summaries within ~~his~~ the defendant's knowledge of the substance of any oral statements made by such witnesses to defense counsel or obtained by the defendant at the direction of ~~his~~ defense counsel.

(c) Alibi. If the defendant intends to offer evidence of an alibi, the defendant shall also inform the prosecuting attorney of the specific place or places where the defendant contends ~~he was~~ to have been when the alleged offense occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses ~~he~~ the defendant intends to call at the trial in support of the alibi.

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

(d) Criminal Record. Defense counsel shall inform the prosecuting attorney of any prior convictions of the defendant provided the prosecuting attorney informs defense counsel of the record of prior convictions known to the prosecuting attorneys.

(e) Entrapment. ~~If the~~ A defendant who gives notice of intention to rely on the defense of entrapment, ~~he~~ shall include in the notice a statement of the facts forming the basis for the defense, and ~~whether he elects~~ elect whether to have the defense submitted to the court or to the jury.

The entrapment defense may not be submitted to the court unless the defendant waives jury trial upon that issue as provided by Rule 26.01, subd. 1(2).

If the entrapment defense is submitted to the court, the hearing thereon shall be included in the Omnibus Hearing under Rule 11 or in the evidentiary hearing provided for by Rule 12. The court shall make findings of fact and conclusions of law on the record supporting its decision.

Subd. 2. Discovery Upon Order of Court.

(1) Disclosures Permitted. Upon motion of the prosecuting attorney with notice to defense counsel and a

showing that one or more of the discovery procedures hereafter described will be of material aid in determining whether the defendant committed the offense charged, the trial court at any time before trial may, subject to constitutional limitations, order a defendant to:

(a) Appear in a lineup;

(b) Speak for identification by witnesses to an offense or for the purpose of taking voice prints;

(c) Be fingerprinted or permit ~~his~~ the defendant's palm prints or footprints to be taken;

(d) Permit measurements of ~~his~~ the defendant's body to be taken;

(e) Pose for photographs not involving re-enactment of a scene;

(f) Permit the taking of samples of ~~his~~ the defendant's blood, hair, saliva, urine, and other materials of ~~his~~ the defendant's body which involve no unreasonable intrusion thereof; provided, however, that the court shall not permit a blood test to be taken except upon a showing of probable cause to believe that the test will aid in establishing the guilt of the defendant;

(g) Provide specimens of ~~his~~ the defendant's handwriting; and

(h) Submit to reasonable physical or medical inspection of ~~his~~ the defendant's body.

(2) Notice of Time and Place of Disclosures. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place thereof shall be given by the prosecuting attorney to defense counsel.

(3) Medical Supervision. Blood tests shall be conducted under medical supervision, and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the defendant, the court may order the defendant's appearance delayed for a reasonable time or may order that it take place at ~~his~~ the defendant's residence, or some other convenient place.

(4) Notice of Results of Disclosure. Unless otherwise ordered by the court, the prosecuting attorney, within five

(5) days from the date the results of the discovery procedures provided by this rule become known ~~to him~~, shall make available to defense counsel a report of the results.

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

Subd. 3. Information Not Subject to Disclosure by Defendant; Work Product. 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 defendant or ~~his~~ defense counsel or persons participating in the defense are not subject to disclosure.

Subd. 4. Failure to Call Witness. The fact that a witness' name is on a list furnished by defendant to the prosecution under this rule shall not be commented on in the presence of the jury."

68. Rule 9.03, Subd. 2. Continuing Duty to Disclose.

Amend part (a) of this rule as follows:

rules, legal research, records, correspondence, reports or memoranda to the extent they contain the opinions, theories, or conclusions of the defendant or ~~his~~ defense counsel or persons participating in the defense are not subject to disclosure.

Subd. 4. Failure to Call Witness. The fact that a witness' name is on a list furnished by defendant to the prosecution under this rule shall not be commented on in the presence of the jury."

68. Rule 9.03, Subd. 2. Continuing Duty to Disclose.

Amend part (a) of this rule as follows:

"(a) If subsequent to compliance with any discovery rule or order, a party discovers additional material, information or witnesses subject to disclosure, ~~he~~ that party shall promptly notify the other party of the existence of the additional material or information and the identity of the witnesses."

69. Rule 9.03, Subd. 4. Custody of Materials.

Amend this rule as follows:

"Subd. 4. Custody of Materials. Any materials furnished to an attorney under discovery rules or orders shall remain in ~~his~~ the custody of and be used by ~~him~~ the attorney only for the purpose of conducting ~~his~~ that attorney's side of the case, and shall be subject to such other terms and conditions as the court may prescribe."

70. Rule 9.03, Subd. 5. Protective Orders.

Amend this rule as follows:

"Subd. 5. Protective Orders. Upon a showing of cause, the trial court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate. All material and information to which a party is entitled must be disclosed in time to afford ~~his~~ counsel the opportunity to make beneficial use of it."

71. Rule 9.04. Physical or Mental Examination of Prospective Witness.

Amend the rules by adding the following new Rule 9.04:

"Rule 9.04. Physical or Mental Examination of Prospective Witness

There shall be no court order for a physical or mental examination of an individual other than the defendant unless the court expressly finds, following hearing, that such examination is necessary in the interests of justice or of a fair trial and that the individual sought to be examined is likely to be called as a witness at any trial or hearing on the pending criminal charges. Either the defendant or the prosecuting attorney may request such an examination by motion supported by affidavit with notice to the other party and to the person sought to be examined. If the court finds that the affidavits presented fail to establish a prima facie case for the examination, then the motion shall be summarily denied. If the court finds that such a prima facie case has been established, the court shall give the parties and the individual sought to be examined an opportunity to be heard further on the matter before deciding the motion. If the motion is granted, the court order shall specify the time, place, manner, conditions, and scope of the examination and by whom it may be made. The order shall further direct that a copy of any written report made of the examination including the findings, test results, diagnoses, and conclusions shall be provided to the court, counsel for the parties, and the individual examined.

The report is confidential and may not be duplicated or divulged except as permitted by the court upon trial or hearing of the matter. Upon completion of the proceedings all copies of the report held by the parties shall be returned to the court and shall be marked confidential and sealed."

72. Comments on Rule 9.

Amend the second paragraph of the comments on Rule 9 as follows:

"It is the object of the rules that these discovery procedures shall be completed so far as possible by the time of the Omnibus Hearing under Rule 11, which will be held within 28 days after the defendant's first appearance in court following a complaint under Rule 5, or within 14 days after ~~his~~ 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)."

73. Comments on Rule 9.01, Subd. 1.

Amend the comments on Rule 9 by adding the following new paragraph after the existing fourth paragraph:

"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 which must be made by the prosecuting attorney upon request of defense counsel. 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."

74. Comments on Rule 9.01, Subd. 1.

Amend the eighth paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 1(1)(b), forbidding comment to the jury on the fact that a person was named on the list of prosecution witnesses, is taken from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(4) (1970) (48 F.R.D. 553, 590). This rule is not intended to affect any right

defense counsel may have by existing law to comment on the fact that the prosecution has failed to call a particular witness, but prevents ~~him~~ defense counsel from commenting on the fact that the witness was on the prosecution's list."

75. Comments on Rule 9.01, Subd. 1.

Amend the comments on Rule 9 by adding the following new paragraph after the existing ninth paragraph:

"Rule 9.01, subd. 1(1)(d) requiring the disclosure of the names of all persons having information related to the case is taken from Unif. R. Crim. P. 421(a) (1987). Additionally, the other specific items required to be disclosed by Unif. R. Crim. P. 421(a) (1987) are included in Rule 9.01, subd. 1."

76. Comments on Rule 9.01, Subd. 1.

Amend the tenth paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 1(2), ~~following~~ as originally promulgated followed substantially ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(ii) (Approved Draft, 1970)~~,~~. As revised it is in accord with Unif. R. Crim. P. 421(a) and requires the disclosure of written or recorded ~~statements~~ of all persons ~~defendants (including co-defendants) and accomplices~~ (whether or not the statements will be offered in evidence) and also requires disclosure of the substance of any oral statements ~~of the defendant, co-defendants and accomplices~~ which ~~the prosecution intends to offer in evidence at the trial~~ relate to the case."

77. Comments on Rule 9.01, Subd. 1.

Amend the twelfth paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 1(3), providing for discovery of documents and tangible objects, ~~is~~ was originally taken from ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(v) (Approved Draft, 1970), Fed. R. Crim. P. 16(6), and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(iv) (1970), 48 F.R.D. 553, 588 to 599). It has been broadened based on Unif. R. Crim. P. 421(a)(1987) to include grand jury minutes or transcripts, law enforcement officer reports, and reports on prospective jurors. Additionally, the items which must be disclosed need only relate to the

case, whether or not the prosecuting attorney intends to offer evidence about them at trial. This rule permits the defendant to obtain from the prosecuting attorney grand jury transcripts possessed by the prosecuting attorney. If the defendant wants portions of the grand jury record not yet transcribed or possessed by the prosecuting attorney, it is necessary to request that of the court under Rule 18.05 and to meet the standards under that rule."

78. Comments on Rule 9.01, Subd. 1.

Amend the thirteenth paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 1(4) for discovery of reports of examinations and tests follows F.R.Crim.P. 16(a)(2) and ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iv) (Approved Draft, 1970). The provision in this rule for reasonable tests by the defendant is taken from Unif. R. Crim. P. 421(a) (1987). 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."

79. Comments on Rule 9.01, Subd. 2.

Amend the eighteenth paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 2 provides for additional discretionary disclosure upon order of the court. A motion seeking such an order must be served on the other party as required by Rules 10.04, subd. 1 and 33.01. The first paragraph of Rule 9.01, subd. 2 requires the prosecuting attorney under certain circumstances to assist the defendant in seeking access to materials related to the case which are in the control of other governmental agencies. This provision of the rule does not allow a defendant access to materials possessed by other governmental agencies that are protected by the Minnesota government data practices act in Minn. Stat. Ch. 13 or by other legislation. This provision is similar to Unif. R. Crim. P. 421(d) (1987) except that under Rule 9.01, subd. 2 a court order is required upon a showing of good cause. The second paragraph of this rule permitting the defendant to request the court to order a lineup, voice identification test or similar procedure requiring a court order is based on Unif. R. Crim. P. 435 (1987) and ALI Model Code of Pre-Arraignment Procedure § 170.2(8) (1975). The defendant who is convinced that such

nontestimonial evidence would "clear" him or her may desire to proceed under this rule, although most nontestimonial evidence procedures could be conducted by the defendant without using this rule. Reference is made to the defendant being arrested or cited because there may be need to obtain nontestimonial evidence before a complaint is filed. The standard for issuing the order differs slightly from that utilized in Rule 9.02, subd. 2(1) upon a similar motion by the prosecuting attorney. The "good cause" standard used here minimizes the possibility that the defendant will be required to offer potentially incriminating evidence in order to utilize this rule. The third paragraph of Rule 9.01, subd. 2, following ABA Standards, Discovery and Procedure Before Trial, 2.5(a)(Approved Draft, 1970), permits disclosure by order of court of relevant material not covered by Rule 9.01, subd. 1. This rule does not permit the discovery of material non-discoverable under Rule 9.01, subd. 3 and is not intended as one of the exceptions referred to in Rule 9.01, subd. 3(1)(a)."

80. Comments on Rule 9.01, Subd. 3(1)(a).

Amend the twenty-first paragraph of the comments on Rule 9 as follows:

"Rule 9.01, subd. 3(1)(a), defining non-discoverable work product is taken from ABA Standards, Discovery and Procedure Before Trial, 2.6(a) (Approved Draft, 1970) and excludes material containing opinions, theories, or conclusions of the prosecutor and ~~his~~ the prosecution staff and official investigators with the exception of the material specifically made discoverable by Rule 9.01, subd. 1. Rule 9.01, subd. 2 providing for discretionary discovery by order of court is not intended as one of the exceptions to the work product rule."

81. Comments on Rule 9.02, Subd. 1.

Amend the twenty-sixth paragraph of the comments on Rule 9 as follows:

"Rule 9.02, subd. 1(1) for disclosure of documents and tangible objects to be introduced at trial follows the original language of the parallel rule (Rule 9.01, subd. 1(3)) for prosecution disclosure of similar material. (See F.R.Crim.P. 16(c); Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(b)(1)(i) (1970), 48 F.R.D. 553, 591.) The requirement 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."

82. Comments on Rule 9.02, Subd. 1(3).

Amend the twenty-ninth through thirty-third paragraphs of the comments on Rule 9 as follows:

"Rule 9.02, subd. 1(3)(a) requires written notice of any defense other than not guilty on which the defendant intends to rely at the trial with the names and addresses of the witnesses ~~he~~ the defendant intends to call at the trial. This rule is based on ABA Standards, Discovery and Procedure Before Trial, 3.3 (Approved Draft, 1970). The defendant is not required to indicate the witnesses ~~he intends to use~~ intended to be used for each defense except in the case of the defense of alibi (Rule 9.02, subd. 1(3)(c)). Illustrations of the kinds of defenses requiring notice are set forth in Rule 9.02, subd. 1(3)(a). (See Williams v. Florida, 90 S.Ct. 1893, 399 U.S. 78, 26 L.Ed.2d 446 (1970) sustaining the constitutionality of the Florida notice-of-alibi statute.) (This rule expands present Minnesota statutory law covering notice of alibi. Minn.Stat. § 630.14 (1971).)

"Under Rule 9.02, subd. 1(3)(a), ~~if the~~ a defendant who gives notice of ~~his~~ intention to rely on the defense of mental illness or mental deficiency, ~~he~~ shall notify the prosecution ~~whether he also intends~~ of any intention to rely also on the defense of not guilty. This notice is necessary for the purposes of Rule 20.02, subd. 6(1) and (2) governing the procedure following a mental examination when the defense is mental illness or mental deficiency.

"In addition to Rule 9.02, subd. 1(3)(a), case law may establish notice requirements with which a defendant must comply in order to raise certain defenses. In State v. Grilli, 304 Minn. 80, 230 N.W.2d 445 (1975), the Court established the requirement that a defendant raising the defense of entrapment must notify the trial court and the prosecutor of the basis for the defense in reasonable detail and whether ~~he~~ the defendant elects to have the issue of entrapment tried to the court or to a jury.

"Rule 9.02, subd. 1(3)(d) for disclosure of the defendant's criminal record is similar to Rule 9.01, subd. 1~~(4)~~ (5) for prosecution disclosure of the record.

"The procedures set forth in Rule 9.02, subd. 1(3)(e) for asserting the entrapment defense are taken from State v. Grilli, 304 Minn. 80, 230 N.W.2d 445 (1975). That case

further requires that upon submission of the defense to court or jury, the defendant has the burden of proving by a fair preponderance of the evidence ~~that he was induced~~ inducement by government agents to commit the crime charged, whereupon the burden rests on the state to prove beyond a reasonable doubt ~~that~~ predisposition by defendant ~~was predisposed~~ to commit the offense."

83. Comments on Rule 9.02, Subd. 2.

Amend the thirty-fifth paragraph of the comments on Rule 9 as follows:

"Rule 9.02, subd. 2, requiring the defendant upon order of court to personally submit to the non-testimonial identification and other procedures described in the rule, is based upon ABA Standards, Discovery and Procedure Before Trial, 3.1 (Approved Draft, 1970) and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 41.1 (1971), 52 F.R.D. 409, 462-467. (See also, Schmerber v. California, 384 U.S. 757 (1966), Davis v. Mississippi, 394 U.S. 721, 727-728 (1969).) This rule is intended to be applicable only after an indictment has been returned, or a complaint filed upon which probable cause for the arrest of the defendant has been found or a tab charge has been entered and no complaint demanded for gross misdemeanors under Minn. Stat. §169.121 and Minn. Stat. §169.129."

84. Comments on Rule 9.02, Subd. 2.

Amend the thirty-seventh paragraph of the comments on Rule 9 as follows:

"Following a complaint charging a felony or gross misdemeanor or a tab charge charging a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129, the order may be obtained at the first appearance of the defendant under Rules 4.02, subd. 5(1) and 5, or at or before the Omnibus Hearing under Rule 11 from the court before which that hearing is held. It may be obtained from the district court at any time before trial, but preferably at or before the Omnibus Hearing."

85. Comments on Rule 9.02, Subd. 2(2).

Amend the thirty-eighth paragraph of the comments on Rule 9 as follows:

"Rule 9.02, subd. 2(2), requiring notice to defense counsel of the time and place for the personal appearance of the defendant, would include the defendant if ~~he~~ the defendant represents herself or himself or is unrepresented. This rule is taken from ABA Standards, Discovery and Procedure Before Trial, 3.1(b) (Approved Draft, 1970)."

86. Comments on Rule 9.03, Subd. 2.

Amend the forty-fifth paragraph of the comments on Rule 9 as follows:

"The first sentence of Rule 9.03, subd. 2 providing for a continuing duty of disclosure is taken from ABA Standards, Discovery and Procedure Before Trial, 4.2 (Approved Draft, 1970) and F.R.Crim.P. 16(g). The second sentence is intended to make it clear that each party has a continuing duty before and at trial to make the disclosures required by Rules 9.01, subd. 1 and 9.02, subd. 1 regardless of whether ~~he~~ the party has previously made discovery under the rules or on order of court. A party who fails to make discovery when under a duty to do so may be ordered to comply under Rule 9.03, subd. 8."

87. Comments on Rule 9.04.

Amend the comments on Rule 9 by adding the following new paragraph at the end of the existing comments:

"Rule 9.04 recognizes the right as set forth in case law to seek an examination of a prospective witness on such matters as eyesight, hearing or mental condition in limited circumstances and provides the procedure for seeking such an order. As to the discretion of the court to order or deny a psychiatric examination of a witness or victim see State v. Whelan, 291 Minn. 83, 189 N.W.2d 170 (1971); State v. Shotley, 305 Minn. 384, 233 N.W.2d 755 (1975); State v. Johnson, 256 N.W.2d 280 (Minn. 1977); State v. Sullivan, 360 N.W.2d 418 (Minn. App. 1985); and State v. Holmes, 374 N.W.2d 457 (Minn. App. 1985). The rule is based on Unif. R. Crim. P. 433 (1987), but the standard for ordering the examination differs. The examination must be in the interests of justice or of a fair trial and the person sought to be examined may be a prospective witness for the movant and not just for the other party. The standard and procedures established are intended to insure that the privacy of the prospective witness will be invaded only when necessary. The affidavit procedure set forth in the rule is to assure that the prospective witness will not be put to the trouble of responding to the request for examination

unless the court first finds that the movant has presented a prima facie case for that. If that is shown, the prospective witness along with the other party shall be given the opportunity to be heard on the motion before a final decision is made. This should be done at or by the Omnibus Hearing, if possible. The requirement for specifying the time, place, manner, conditions and scope of the examination is taken from Unif. R. Crim. P. 433(b) (1987) and Fed. R. Civ. P. 35(a). The right to obtain a copy of any report made is taken from Unif. R. Crim. P. 433(c) (1987) and Fed. R. Civ. P. 35(b)(1) except that the report is to be provided automatically to the court, counsel and the person examined and provision is made for confidentiality of the report."

88. Rule 10.04, Subd. 2. Hearing Date.

Amend the first paragraph of this rule as follows:

"In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it shall be heard at that hearing and shall be determined ~~before trial~~ as provided by Rule 11.07."

89. Comments on Rule 10.

Amend the second sentence of the second paragraph of the comments on Rule 10 as follows:

"The entry of any of these pleas does not relieve the defendant of the requirements of Rule 9.02, subd. 1(3)(a) for service of notice of the defenses on which ~~he~~ the defendant intends to rely."

90. Comments on Rule 10.02.

Amend the second sentence of the fifth paragraph of the comments on Rule 10 as follows:

"Therefore, ~~if the~~ a defendant who has been tab charged, ~~he~~ must first demand a complaint under Rule 4.02, subd. 5(3) before ~~he may raise~~ raising the jurisdictional challenge."

91. Comments on Rule 10.02.

Amend the last sentence of the sixth paragraph of the comments on Rule 10 as follows:

"But see also State v. Harbitz, 293 Minn. 224, 198

N.W.2d 342 (1972) where the defendant following a trial on the merits was permitted to challenge on appeal the trial court's denial of ~~his~~ the defendant's pretrial motion to quash an improper indictment."

92. Comments on Rule 10.02.

Amend the first sentence of the eighth paragraph of the comments on Rule 10 as follows:

"If the defendant's motion to dismiss is denied, Rule 17.06, subd. 4(1) provides that ~~he~~ the defendant may continue to raise the jurisdictional issue on direct appeal if convicted following a trial."

93. Comments on Rule 10.04, Subd. 1.

Amend the last sentence of the twelfth paragraph of the comments on Rule 10 as follows:

"Rule 10.04, subd. 1 should not prevent the court from hearing at the Omnibus Hearing on the court's ~~own motion~~ initiative (See Rule 11.04.) those issues which first appear or arise at that time if the parties do not need additional time to prepare."

94. Comments on Rule 10.04, Subd. 2.

Amend the next to the last paragraph of the comments on Rule 10 as follows:

"Under Rule 10.04, subd. 2, pre-trial motions heard at the Omnibus Hearing and those heard afterward shall be determined ~~before the date set for trial. (See Rule 11.07.)~~ by the time as provided by Rule 11.07, which requires the Omnibus Hearing to be completed and all issues decided within 30 days after the defendant's appearance under Rule 8 unless a later time is justified by good cause related to the particular case. In misdemeanor cases, under Rule 10.04, subd. 2, pre-trial motions shall be determined as provided by Rule 12.07."

95. Rule 11. OMNIBUS HEARING IN FELONY AND GROSS MISDEMEANOR CASES.

Amend the first paragraph of this rule as follows:

"If the defendant does not plead guilty at ~~his~~ the

initial appearance before the district court following a complaint or, for a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. 169.129, following a tab charge, a hearing shall be held as follows:"

96. Rule 11.04. Other Issues.

Amend the first paragraph of this rule as follows:

"The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose as permitted by Rule 11.07."

97. Rule 11.06. Pleas.

Amend this rule as follows:

"Rule 11.06. Pleas

At the hearing the defendant may be permitted to plead to the offense charged in the complaint or, for a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129, the tab charge or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15."

98. Rule 11.07. Continuances; Determination of Issues.

Amend this rule as follows:

"Rule 11.07. Continuances; Determination of Issues

Upon motion of the prosecuting attorney or the defendant or upon the Court's initiative, the ~~The~~ court may continue the hearing or any part thereof from time to time as may be necessary, but may not continue it beyond 30 days after the defendant's appearance under Rule 8 except for good cause related to the particular case. All issues presented at the Omnibus Hearing shall be determined ~~before trial~~ within 30 days after the defendant's initial appearance under Rule 8 unless a later determination is required for good cause related to the particular case. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing."

99. Rule 11.08, Subd. 2. Transcript.

Amend part (a) of this rule as follows:

"(a) If the transcript is to be furnished to defense counsel, the costs thereof shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit ~~that he is unable~~ of inability to pay or secure the costs and the court orders that ~~he~~ the defendant be supplied with the transcript at the expense of the appropriate governmental unit."

100. Rule 11.10. Plea; Trial Date.

Amend this rule as follows:

"Rule 11.10. Plea; Trial Date

If the defendant is not discharged ~~he~~ the defendant shall plead to the complaint or, for gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129, the tab charge or be given additional time within which to plead. If ~~he~~ the defendant pleads not guilty, a trial date shall then be set. A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the trial shall be commenced within sixty (60) days from the date of the demand unless good cause is shown upon ~~by~~ the ~~prosecution~~ prosecuting attorney's or the defendant's motion or upon the court's initiative why ~~he~~ the defendant should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea. If trial is not commenced within 120 days after such demand is made and the not guilty plea is entered, the defendant, except in exigent circumstances, shall be released subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1."

101. Comments on Rule 11.

Amend the first two paragraphs of the comments on Rule 11 as follows:

"If a defendant does not plead guilty at ~~his~~ the initial appearance before the district court ~~following a complaint~~ under Rule 8, the Omnibus Hearing provided by Rule 11 shall be held. The initial appearance may be continued, and if ~~he~~ the defendant does not then plead guilty, the Omnibus Hearing shall be held as provided by the rule.

"The Omnibus Hearing provided by this rule is divided

into three parts: (1) the Rasmussen hearing (Rule 11.02); (2) the hearing of pre-trial motions of the defendant and prosecution (Rule 11.04); (3) the hearing on other pre-trial issues brought up on the court's ~~own-motion~~ initiative (Rule 11.04). The hearings on any of these parts may be combined and heard simultaneously (Rule 11.07)."

102. Comments on Rule 11.

Amend the fourth paragraph of the comments on Rule 11 as follows:

"If the defendant does not plead guilty upon ~~his~~ the initial appearance in the district court under Rule 8 following a complaint or, where permitted, a tab charge or upon arraignment in the district court under Rule 19.04, subd. 5 following an indictment, the Omnibus Hearing (See ABA Standards, Discovery and Procedure Before Trial, 1.1, 5.1-5.3 (Approved Draft, 1970).) shall be held as provided by Rule 11 not later than fourteen (14) days after the initial appearance or arraignment, unless the period is extended for good cause related to the particular case (Rules 8.04; 19.04, subd. 5)."

103. Comments on Rule 11.02.

Amend the eighth paragraph of the comments on Rule 11 as follows:

"Rule 11.02 covers the Rasmussen hearing demanded under Rule 8.03 (or required by a motion to suppress in the case of an indictment). Upon the Rasmussen hearing under Rule 11.02 both parties may offer evidence and cross-examine the other's witnesses. The rule leaves to judicial interpretation the consequences of the defendant's testimony at a Rasmussen or similar evidentiary hearing, that is, whether it may be used against ~~him~~ the defendant at trial substantively (See Simmons v. United States, 390 U.S. 377, (1968).) or by way of impeachment (cf. Harris v. New York, 401 U.S. 222 (1971))."

104. Comments on Rule 11.04.

Amend the first sentence of the eleventh paragraph of the comments on Rule 11 as follows:

"The court shall also on its ~~own-motion~~ initiative under Rule 11.04 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."

105. Comments on Rule 11.07.

Amend the last sentence of the fifteenth paragraph of these comments on Rule 11 as follows:

"Unless ~~it is not possible to do so~~ a later determination is justified by good cause related to the particular case, Rule 11.07 requires that all issues presented to the court at the Omnibus Hearing must be decided ~~before trial~~ within 30 days after the defendant's initial appearance before the court under Rule 8."

106. Comments on Rules 11.06 and 11.07.

Amend the sixteenth and seventeenth paragraph of the comments on Rule 11, as follows:

"Under Rule 11.06 the defendant at the Omnibus Hearing may plead to the complaint or indictment or, for gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129, the tab charge or to a lesser or different offense as provided by Rules 14 and 15. See Rules 15.07 and 15.08 as to the standards and procedure for entering a plea to a lesser or a different offense.

"By Rule 11.07 the Omnibus Hearing or any part thereof may be continued if necessary to dispose of the issues presented. However, the Omnibus Hearing must be completed and any issues decided within 30 days after the defendant's appearance under Rule 8 unless a later time is justified by good cause related to the particular case. 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. To do so violates the purpose of these rules. See Rule 1.02 and the comments thereto. All issues presented at the Omnibus Hearing shall be determined ~~before trial~~ within 30 days after the defendant's initial appearance under Rule 8 unless a later determination is required for good cause related to the particular case. (See also Rule 10.04, subd. 2)."

107. Comments on Rule 11.10.

Amend the twenty-first paragraph of the comments on Rule 11 as follows:

"~~If the~~ A defendant who is not discharged following the

Omnibus Hearing, ~~he~~ shall plead to the indictment or complaint or, for gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129, the tab charge in the district court or be given additional time within which to plead. If ~~he~~ the defendant pleads not guilty, a trial date shall be set. (Rule 11.10)."

108. Comments on Rule 11.10.

Amend the comments on Rule 11 by adding the following new paragraph after the existing twenty-second paragraph:

"For good cause the trial may be postponed beyond the 60-day time limit upon request of the prosecuting attorney 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 (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)."

109. Comments on Rule 11.10.

Amend the twenty-fifth paragraph of the comments on Rule 11 as follows:

"The consequences and the time limits beyond which a defendant is considered to have been denied ~~his~~ the constitutional right to a speedy trial are left to judicial decision. (See Barker v. Wingo, 407 U.S. 514 (1972).) The existence or absence of the demand under Rule 11.10 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.)"

110. Comments on Rule 11.10.

Amend the last sentence of the last paragraph of the comments on Rule 11 as follows:

"It is contemplated that when the pre-trial proceedings have been completed, the court will require the defendant to

enter a plea, if ~~he~~ the defendant has not already done so, in order that the defendant cannot delay the trial by intentionally delaying ~~his~~ the plea. (Rule 11)."

111. Rule 12.02. Motions.

Amend this rule as follows:

"Rule 12.02. Motions

The court shall hear and determine all motions made by the defendant or prosecution and receive such evidence as may be offered in support or opposition. The defendant may offer evidence in ~~his own behalf~~ defense, and the defendant and prosecution may cross-examine the other's witnesses."

112. Comments on Rule 12.

Amend the seventh sentence of the third paragraph of the comments on Rule 12 as follows:

"At the conference the court on its ~~own motion~~ initiative under Rule 12.03 shall also ascertain and hear any other issues that can be heard and disposed of before trial."

113. Comments on Rule 12.04.

Amend the eighth paragraph of the comments on Rule 8 as follows:

"At the Rasmussen hearing, both parties may offer evidence (Rule 12.04, subd. 2) and cross-examine the other's witnesses (Rule 12.04, subd. 3). The rule leaves to judicial interpretation the consequences of the defendant's testimony at a Rasmussen or similar evidentiary hearing as to whether it can be used against ~~him~~ the defendant at trial substantively (see Simmons v. United States, 390 U.S. 377, (1968)) or by way of impeachment (cf. Harris v. New York, 401 U.S. 222 (1971))."

114. Rule 13.02. Right to Counsel.

Amend this rule as follows:

"Rule 13.02. Right to Counsel

If the defendant other than a corporation appears without counsel, the court shall advise ~~him~~ the defendant of ~~his~~ the right to counsel, and when required, shall appoint counsel pursuant to Rule 5.02."

115. Rule 13.03. Copy and Reading of Charges.

Amend this rule as follows:

"Rule 13.03. Copy and Reading of Charges

The defendant shall be provided with a copy of the complaint or indictment if ~~he~~ it has not been previously ~~received a copy~~ provided. The complaint or indictment shall be read to ~~him~~ the defendant unless ~~he waives~~ the reading is waived. For gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129 prosecuted by tab charge pursuant to Rule 4.02, subd. 5(3), the tab charge shall be read to the defendant."

116. Comments on Rule 13.

Amend the first through last paragraph of the comments on Rule 13 as follows:

"Arraignment as provided by Rule 13, will take place at the appearance of the defendant in the court under Rule 8 following a complaint charging a felony or gross misdemeanor or following entry of a tab charge for a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129 or under Rule 19.04, subd. 4 and subd. 5 following an indictment. At that time the defendant may enter only a guilty plea. If the defendant does not wish to plead guilty, no other plea is to be entered then and the arraignment is continued until the Omnibus Hearing when pursuant to Rule 11.10 the defendant shall plead ~~to the complaint or the complaint as amended~~ or be given additional time within which to plead. In the case of a complaint charging a felony or gross misdemeanor, the arraignment in the court under Rule 8.01 shall be held within 14 days after the defendant's initial appearance before a court (Rule 5.03), under Rule 5, and in the case of an indictment, within 7 days after the defendant's first appearance in the district court (Rule 19.04, subd. 1 and subd. 4). In the case of gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129, the arraignment under Rule 13 shall be held within 14 days after the tab charge is entered or within 14 days after the complaint, if any, is filed (Rules 4.02, subd. 5(3) and 5.03). Of course the appearances under Rule 5 and Rule 8 could be consolidated pursuant to Rule 5.03 and the arraignment on the complaint or tab charge would then be held at that consolidated appearance.

"The requirement of Rule 13.01 that the arraignment shall be conducted in open court is taken from F.R.Crim.P.

10 and follows present Minnesota practice (Minn.Stat. § 630.01 (1971)).

"Rule 13.02 providing that the court shall advise the defendant of ~~his~~ the right to counsel continues the requirements of Minn.Stat. §§ 611.15, 630.10 (1971).

"If the defendant has the right to counsel (See ABA Standards, Providing Defense Services, 4.1 (Approved Draft, 1968); State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967)), appears without counsel, and is financially unable to afford counsel, Rule 13.02 requires the court to appoint counsel ~~for him~~ unless ~~he~~ the defendant knowingly and voluntarily waives the right (ABA Standards, Providing Defense Services, 7.1, 7.2 (Approved Draft, 1968)). The waiver shall be in writing (Minn.Stat. § 611.19 (1971); ABA Standards, Providing Defense Services, 7.3 (Approved Draft, 1968)) or under Rule 13.02 may be made orally before the court on the record.

"Rule 13.03 requiring that the defendant be provided with a copy of the indictment or complaint and that the indictment or complaint be read to ~~him~~ the defendant unless ~~he waives the reading~~ waived continues the practice under Minn.Stat. § 630.11 (1971).

"Under Rule 13.04, the defendant shall be called on to plead (See F.R.Crim.P. 10), or shall be given such time as the court determines within which to plead. (This follows present Minnesota practice (Minn.Stat. § 630.13 (1971)). If the defendant does not plead guilty, Rules 8.04 and 19.04, subd. 5 provide that an Omnibus Hearing under Rule 11 shall be scheduled within 14 days and 7 days respectively, and ~~he~~ the defendant will not be required or permitted to plead earlier than that date.

"By Rule 11.10, if the defendant is not discharged following the Omnibus Hearing, ~~he~~ the defendant shall plead to the complaint or, when authorized, the tab charge promptly or may be given additional time.

"When ~~he~~ the defendant pleads not guilty, a trial date shall be set (See Rule 11.10).

"When ~~he~~ the defendant pleads guilty, the procedure prescribed by Rule 15 shall be followed."

117. Rule 14.02, Subd. 1. By an Individual in Felony and Gross Misdemeanor Cases.

Amend this rule as follows:

"Subd. 1. By an Individual in Felony and Gross Misdemeanor Cases. A plea to an indictment or complaint or, for a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129, a tab charge by an individual defendant shall be made orally on the record by the defendant in person."

118. Rule 14.02, Subd. 2. By an Individual in Misdemeanor Cases.

Amend this rule as follows:

"Subd. 2. By an Individual in Misdemeanor Cases. A plea to a complaint or tab charge by an individual defendant shall be made orally on the record or by the petition to plead guilty provided for in Rule 15.03, subd. 2. If the court is satisfied that the defendant has knowingly and voluntarily waived ~~his~~ the right to be present, the plea may be entered by counsel."

119. Rule 14.03. Time of Plea.

Amend the second sentence of this rule as follows:

"To schedule such an appearance, the defendant shall file a written request with the clerk of court indicating the offense to which ~~he~~ the defendant wishes to plead guilty."

120. Comments on Rule 14.

Amend the second and third paragraphs of the comments on Rule 14 as follows:

"Rule 20.02, subd. 6(2) and (5), 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 mental deficiency when ~~he intends~~ intending to put in issue both ~~his~~ guilt of the elements of the offense charged and ~~his~~ mental responsibility by reason of mental illness or mental deficiency.

"A conditional plea of guilty may not be entered whereby the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. State v. Lothenbach, 296 N.W.2d ~~864~~ 865 (Minn. 1980). One option, as authorized by Rule 26.01, subd. 2, 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."

121. Comments on Rule 14.04, Subd. 2.

Amend the fifth paragraph of the comments on Rule 14 as follows:

"Rule 14.04, subd. 2, unlike Minn.Stat. § 630.29, permits a plea of guilty or not guilty to a misdemeanor to be made by counsel, with the permission of the court. Otherwise, the plea shall be made in person except in the case of a corporation. 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, and whether the plea would be acceptable under Rule 15 if the defendant ~~himself~~ were present personally in court. The petition to plead guilty provided for in Rule 15.03, subd. 2 and in the Appendix B to Rule 15, if properly completed and filed with the court, constitutes a proper plea. The defendant need not be present when it is filed and accepted. 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). If the court is satisfied that the defendant has knowingly and voluntarily decided to enter the plea and to waive ~~his~~ the right to be present in court, then the court must allow the plea to be entered in the defendant's absence."

122. Rule 15.01. Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases.

Amend this rule as follows:

"Rule 15.01. Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases

Before the court accepts a plea of guilty, the defendant shall be sworn and questioned by the court with the assistance of counsel as to the following:

1. Name, age and date and place of birth.

2. Whether ~~he~~ the defendant understands the ~~charge against him~~ crime charged.

3. Specifically, whether ~~he~~ the defendant understands that ~~he has been~~ the crime charged ~~with the crime of~~ is (name of offense) committed on or about (month) (day) (year) in _____County, Minnesota (and that ~~he~~ the defendant is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser

included offense of the crime charged).

4. a. Whether ~~he~~ the defendant has had sufficient time to discuss the case with ~~his attorney~~ defense counsel.

b. Whether ~~he~~ the defendant is satisfied that ~~his attorney~~ defense counsel is fully informed as to the facts of the case, and that ~~his attorney~~ defense counsel has represented ~~his~~ the defendant's interests and fully advised ~~him~~ the defendant.

5. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel and understands that ~~if he wishes to plead~~ upon a plea of not guilty, ~~he is entitled~~ there is a right to a trial by jury ~~of 12 persons for a felony and 6 persons for a gross misdemeanor,~~ and that ~~he cannot be found~~ a finding of guilty is not possible unless all jurors agree.

6. a. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel and understands that ~~he~~ there will not ~~have~~ be a trial by either a jury or by a judge without a jury if ~~he~~ the defendant pleads guilty.

b. Whether ~~he~~ the defendant waives ~~his~~ the right to a trial.

7. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel, and understands that if ~~he~~ the defendant wishes to plead not guilty and have a trial by jury or by a judge, ~~he~~ the defendant will be presumed to be innocent until ~~his~~ guilt is proved beyond a reasonable doubt.

8. a. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel, and understands that if ~~he~~ the defendant wishes to plead not guilty and have a trial, the prosecutor will be required to have the prosecution witnesses ~~against him~~ testify in open court in ~~his~~ the defendant's presence, and that ~~he~~ the defendant will have the right, through ~~his attorney~~ defense counsel, to question these witnesses.

b. Whether ~~he~~ the defendant waives ~~his~~ the right to have these witnesses testify in ~~his~~ the defendant's presence in court and be questioned by ~~his attorney~~ defense counsel.

9. a. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel and understands that if ~~he~~ the defendant wishes to plead not guilty and have a trial, ~~he~~ the defendant will be entitled to require any defense witnesses ~~he thinks are favorable~~ to ~~him~~ appear and testify.

b. Whether ~~he~~ the defendant waives this right.

10. Whether ~~his attorney~~ defense counsel has told ~~him~~ the defendant and ~~he~~ the defendant understands:

a. That the maximum penalty that the court could impose for the crime ~~with which he is~~ charged (taking into consideration any prior conviction or convictions) is imprisonment for _____years.

b. That if a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than _____months for the crime ~~with which he is~~ charged.

11. Whether ~~his attorney~~ defense counsel has told ~~him~~ the defendant that ~~he~~ the defendant discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if ~~he~~ the defendant entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)

12. Whether ~~his attorney~~ defense counsel has told ~~him~~ the defendant and ~~he~~ the defendant understands that if the court does not approve the plea agreement, ~~he~~ the defendant has an absolute right to withdraw ~~his~~ the plea of guilty and have a trial.

13. Whether, except for the plea agreement, any policeman, prosecutor, judge, ~~his attorney~~ defense counsel, or any other person, made any promises or threats to ~~him~~ the defendant or any member of ~~his~~ the defendant's family, or any of ~~his~~ the defendant's friends, or other persons~~, or threatened him or any member of his family, or any of his friends, or other persons,~~ in order to obtain a plea of guilty ~~from him~~.

14. Whether ~~his attorney~~ defense counsel has told ~~him~~ the defendant and ~~he~~ the defendant understands that if ~~his~~ the plea of guilty is for any reason not accepted by the court, or is withdrawn by ~~him~~ the defendant with the court's approval, or is withdrawn by court order on appeal or other review, that ~~he~~ the defendant will stand trial on the original charge (charges) ~~against him~~ namely, (state the offense) (which would include any charges that were dismissed as a result of the plea agreement ~~with his attorney~~) and that the prosecution could proceed just as if there had never been any agreement.

15. a. Whether ~~he~~ the defendant has been told by ~~his attorney~~ defense counsel and understands, that if ~~he~~ the

defendant wishes to plead not guilty and have a jury trial, ~~he~~ the defendant can testify if ~~he~~ the defendant wishes, but that if ~~he~~ the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about ~~his~~ the failure to testify.

b. Whether ~~he~~ the defendant waives this right, and agrees to tell the court about the facts of the crime.

16. Whether with knowledge and understanding of ~~his~~ these rights ~~he~~ the defendant still wishes to enter a plea of guilty or ~~whether he~~ instead wishes to plead not guilty.

17. Whether ~~he~~ the defendant makes any claim ~~that he is innocent~~ of innocence.

18. Whether ~~he~~ the defendant is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.

19. Whether ~~he~~ the defendant has any questions to ask or anything to say before ~~he states~~ stating the facts of the crime.

20. What is the factual basis for ~~his~~ the plea.

(NOTE: It is desirable that the defendant also be asked to acknowledge ~~that he has signed~~ signing the Petition to Plead Guilty, suggested form of which is contained in the appendix A to these rules; that ~~he~~ the defendant has read the questions set forth in the petition or that they have been read to ~~him~~ the defendant, and that ~~he~~ the defendant understands them; that ~~he~~ the defendant gave the answers set forth in the petition; and that they are true.)"

123. Rule 15.02. Acceptance of Plea; Questioning of Defendant; Misdemeanor Cases.

Amend this rule as follows:

"Rule 15.02. Acceptance of Plea; Questioning of Defendant; Misdemeanor Cases

Before the court accepts a plea of guilty to any offense punishable upon conviction by incarceration, any plea agreement shall be explained in open court. The defendant shall then be questioned by the court or counsel in substance as follows:

1. Specifically whether ~~he~~ the defendant understands that ~~he has been charged with~~ the crime ~~of~~ charged is (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota (and that the defendant is pleading ~~he is tendering a plea of~~ guilty to the crime of (name of offense)).

2. Whether ~~he~~ the defendant realizes 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. Whether ~~he~~ the defendant knows ~~that he has~~ there is a right to the assistance of counsel at every stage of the proceedings and that counsel will be appointed for ~~him if he cannot~~ a defendant unable to afford counsel.

4. Whether ~~he~~ the defendant knows ~~that he has a~~ of the right:

(a) to trial by the court or a jury ~~of 6 persons~~ and that a finding of guilty is not possible in a jury trial unless all jurors agree;

(b) to confront and cross-examine all prosecution witnesses ~~against him~~;

(c) to subpoena and present defense witnesses ~~for him~~;

(d) to testify or remain silent at trial or at any other time; ~~and~~

(e) ~~that he is~~ to be presumed innocent and that the State must prove its case beyond a reasonable doubt; and

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

5. Whether ~~he~~ the defendant waives these rights.

6. Whether ~~he~~ the defendant understands the nature of the offense charged.

7. Whether ~~he~~ the defendant believes that what ~~he~~ the defendant did constitutes the offense to which ~~he~~ the defendant is pleading guilty.

The court with the assistance of counsel, if any, shall then elicit sufficient facts from the defendant to determine whether there is a factual basis for ~~the plea~~ all elements of the offense to which the defendant is pleading guilty.

Where the guilty plea is being entered at the defendant's first appearance in court, the statement as to ~~his~~ the defendant's rights required by Rule 5.01 may be

combined with the questioning required above prior to entry of a guilty plea."

124. Rule 15.03. Alternative Methods in Misdemeanor Cases.

Amend this rule as follows:

"Rule 15.03. Alternative Methods in Misdemeanor Cases

Subd. 1. Group Warnings. The court may advise a number of defendants at once as to the consequences of a plea and as to their constitutional rights as specified in questions 2, 3 and 4 above. When such a procedure is followed the court's statement shall be recorded and each defendant when called before the court shall be asked whether ~~he~~ the defendant heard and understood the statement. ~~He~~ The defendant shall then be questioned on the record as to the remaining matters specified in Rule 15.02.

Subd. 2. Petition to Plead Guilty. The defendant or ~~his attorney~~ defense counsel may file with the court a petition to plead guilty as provided for in the Appendix B to Rule 15 signed by the defendant indicating that ~~he~~ 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."

125. Rule 15.04, Subd. 1. Propriety of Plea Discussions and Plea Agreements.

Amend the last sentence of this rule as follows:

"~~He~~ The prosecuting attorney shall engage in plea discussions and reach a plea agreement with the defendant only through defense counsel."

126. Rule 15.04, Subd. 3. Responsibilities of the Trial Court Judge.

Amend this rule as follows:

"Subd. 3. Responsibilities of the Trial Court Judge.

(1) Disclosure of Plea Agreement. If a plea agreement has been reached which contemplates entry of a plea of guilty, the trial court judge may permit the disclosure ~~to him~~ of the agreement and the reasons therefor in advance of the time for tender of the plea. When such plea is tendered and the defendant questioned, the trial court judge shall

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 shall so advise the parties in open court and then call upon the defendant to either affirm or withdraw ~~his~~ the plea.

(2) Consideration of Plea in Final Disposition. The court may accept a plea agreement of the parties when the interest of the public in the effective administration of justice would thereby be served. Among the considerations which are appropriate in determining whether such acceptance should be given are:

(a) That the defendant by ~~his plea~~ pleading guilty has aided in ensuring the prompt and certain application of correctional measures ~~to him~~;

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

(c) That the 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) That the defendant has made trial unnecessary when there are good reasons for not having a trial;

(e) That the 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) That the defendant by ~~his plea~~ pleading has aided in avoiding delay in the disposition of other cases and thereby has contributed to the efficient administration of criminal justice."

127. Rule 15.05. Plea Withdrawal.

Amend this rule as follows:

"Rule 15.05. Plea Withdrawal

Subd. 1. To Correct Manifest Injustice. The court shall allow a defendant to withdraw ~~his~~ a plea of guilty 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 sentence. If a defendant is allowed to withdraw ~~his~~ a plea after sentence, the court shall set aside the judgment and the plea.

Subd. 2. Before Sentence. In its discretion the court may also allow the defendant to withdraw ~~his~~ a plea at any time before sentence if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of ~~his~~ 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 ~~his~~ a plea of guilty without ~~asserting that he is~~ an assertion of not guilty of the charge to which the plea was entered."

128. Rule 15.07. Plea to Lesser Offenses.

Amend this rule by adding the following sentence at the end of the rule:

"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 shall be done in writing or on the record and if done only on the record, the proceedings shall be transcribed and filed."

129. Rule 15.08. Plea to Different Offense.

Amend this rule as follows:

"Rule 15.08. Plea to Different Offense

With the consent of the prosecuting attorney and the defendant, the defendant may enter a plea of guilty 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, other than a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129, a new complaint shall be signed by the prosecuting attorney and filed in the district court. The complaint shall be in the form prescribed by Rule 2.01 and Rule 2.03 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 or a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129, the defendant may be charged by complaint or tab charge as

provided in Rule 4.02, subd. 5(3) with the new offense and the original charge shall be dismissed."

130. Rule 15.10. Guilty Plea to Offenses from Other Jurisdictions.

Amend Rule 15 by adding the following new rule as Rule 15.10:

"Rule 15.10. Guilty Plea to Offenses from Other Jurisdictions

Following a plea of guilty 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 by and the plea must be approved by the prosecuting attorney having authority to charge the offenses.

Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction shall be remitted by the clerk of the court imposing the fine to the clerk of the court which originally had jurisdiction over the offense. The clerk of the court of original jurisdiction upon receiving the remittance shall disburse it as required by law for similar fines."

131. Appendix A to Rule 15.

Amend part 2 of Appendix A to Rule 15 as follows:

"2. <u>If filed in my case,</u> I have received, read and discussed a copy of the (Indictment) (Complaint)."

132. Appendix A to Rule 15.

Amend part 13 of Appendix A to Rule 15 by adding a subpart c as follows:

"<u>c. For gross misdemeanor driving while intoxicated charges under Minn. Stat. §169.121 or Minn. Stat. §169.129 if a complaint has not been filed, I know that I could request that a complaint be filed and that I waive my right to do so. I know that I could move that any complaint filed against me be dismissed for lack of probable cause. I also know that if I plead guilty, I waive all right to object to the absence of a probable cause hearing.</u>"

133. Appendix A to Rule 15.

Amend part 14a of Appendix A to Rule 15 as follows:

"a. That the prosecutor for ~~his~~ the case against me, has:

i. physical evidence obtained as a result of searching for and seizing the evidence;

ii. evidence in the form of statements, oral or written that I made to police or others regarding this crime;

iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search;

iv. identification evidence from a lineup or photographic identification;

v. evidence the prosecution believes indicates that I committed one or more other crimes."

134. Appendix A to Rule 15.

Amend part 15a of Appendix A to Rule 15 as follows:

" a. That if I wish to plead not guilty I am entitled to a trial by a jury ~~of 12 persons for a felony and 6 persons for a gross misdemeanor~~ and all jurors would have to agree I was guilty before the jury could find me guilty."

135. Appendix A to Rule 15.

Amend part 20a of Appendix A to Rule 15 as follows:

"a. That ~~he~~ my attorney discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I entered a plea of guilty, the prosecutor will do the following:

(Give the substance of the agreement)"

136. Appendix B to Rule 15.

Amend Appendix B to Rule 15 to read as follows:

APPENDIX B TO RULE 15

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

_____

_____,

Plaintiff,

MISDEMEANOR PETITION TO ENTER PLEA OF GUILTY

vs.

District Court File No.

_____,

Defendant.

_____

TO: THE ABOVE-NAMED COURT:

I wish to enter a plea of guilty in the above-entitled case and I hereby state to the Court the following:

1. I am the Defendant in this case, my full name is _____ _____ and my date of birth is _____.

2. I am charged with (name of offense) in violation of (statute or ordinance).

3. I hereby plead guilty to the offense of (name of offense) in violation of (statute or ordinance).

4. I am pleading guilty because on (date) in the City of _____, County of _____, and State of Minnesota I committed the following acts: (state sufficient facts to establish a factual basis for all elements of the offense to which the defendant is pleading guilty).

5. I understand that the maximum possible sentence for the misdemeanor offense to which I am pleading guilty is 90 days

imprisonment or a fine of (amount) or both.

6. RIGHT TO AN ATTORNEY. I understand that I have the right to be represented by an attorney and that an attorney will be appointed to represent me without cost to me if I cannot afford to pay for an attorney.

7. I have fully discussed the charge(s), my constitutional rights, and this petition with my attorney, (name of attorney)

[or]

7a. WAIVER OF ATTORNEY. I give up my right to be represented by an attorney and any right I might have to request that an attorney be appointed to represent me.

8. I understand that I also have the following constitutional rights which I knowingly and voluntarily give up:

a. The right to a trial to the court or to a jury in which I am presumed innocent until proven guilty beyond a reasonable doubt and in which all jurors in a jury trial must agree I am guilty before the jury could find me guilty.

b. The right to confront and cross-examine all witnesses against me.

c. The right to remain silent or to testify for myself.

d. The right to subpoena and present witnesses to testify for me in my defense.

e. The right to a pretrial hearing to contest the admissibility at trial of any confessions or admissions or of any evidence obtained from a search and seizure.

9. I am entering my plea of guilty freely and voluntarily

and without any promises except as indicated in number 10 below.

10. I am entering my plea of guilty based on the following plea agreement with the prosecutor: _____ (if none, so state)

_____

_____.

11. I understand that if the Court does not approve this agreement I have the right to withdraw my plea of guilty and have a trial.

12. I understand that if this plea of guilty is accepted I have the right to be present at the time of sentencing and to speak and to present evidence on my behalf.

13. I hereby request to be present at the time of sentencing.

[or]

13a. I hereby knowingly and voluntarily give up my right to be present upon (entry of my plea and) sentencing and request that the court sentence me in my absence, but according to any plea agreement that might be contained in this petition.

Dated this _____ day of _____, 19__.

_____
Signature of Defendant

_____
Printed Name of Defendant

I, (name of attorney) _____ state that I am the attorney for the defendant in the above-entitled criminal action; that I personally explained the contents of the above petition to the

defendant; and that I personally observed the defendant date and sign the above petition.

Dated this _____ day of _____, 19__.

_____
Attorney for Defendant

PETITION AND PLEA OF GUILTY ACCEPTED BY

_____ _____
Judge of District Court Date

137. Comments on Rule 15.01.

Amend the first paragraph of the comments on Rule 15 as follows:

"Rule 15.01 adopts in principle ABA Standards, Pleas of Guilty, 1.4-1.6 (Approved Draft, 1968) as to the advice which shall be given to and the inquiry that shall be made of a defendant before acceptance of a plea of guilty to provide assurance that ~~he~~ the defendant understands the nature of the charge and the consequences of ~~his~~ the plea, including the relinquishment of constitutional rights (Boykin v. Alabama, 395 U.S. 238 (1969)); that the plea is voluntary; and that it has a factual basis. See also State v. Johnson, 279 Minn. 209, 156 N.W.2d 218 (1968)."

138. Comments on Rule 15.01.

Amend the first sentence of the third paragraph of the comments on Rule 15 as follows:

"Before entry of a guilty plea, defense counsel should review with the defendant the effect of the Minnesota Sentencing Guidelines on ~~his~~ the case."

139. Comments on Rule 15.01.

Amend the fifth paragraph of the comments on Rule 15 as follows:

"It is suggested by the Advisory Committee that it is desirable to have the defendant sign a Petition to Plead Guilty in the form of the petition appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's

understanding of ~~his~~ defense rights and the consequences of ~~his plea~~ pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge that ~~he has signed~~ signing the petition, that ~~he~~ the defendant has read the questions set forth in the petition or that they have been read to ~~him~~ the defendant and that ~~he~~ the defendant understands them, that ~~he~~ the defendant gave the answers set forth in the petition, and that they are true. This petition is presently in use in some counties in Minnesota."

140. Comments on Rule 15.02.

Amend the second sentence of the sixth paragraph of the comments on Rule 15 as follows:

"Nevertheless, where a defendant is subjected to the possibility of a fine and 90 days incarceration, justice requires that the court inform ~~him~~ the defendant at least of ~~his~~ fundamental constitutional rights, the elements of the offense charged, and the possible consequences of a guilty plea."

141. Comments on Rule 15.

Amend the comments on Rule 15 by adding the following new paragraph after the existing sixth paragraph:

"Care must be taken in accepting a misdemeanor guilty plea or the use of that conviction to aggravate a later misdemeanor to a gross misdemeanor may be endangered. A prior uncounseled guilty plea cannot be used to aggravate a later charge absent a valid waiver of counsel on the record for the earlier plea. State v. Nordstorm, 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. App. 1985). Careful use of the Misdemeanor Petition to Enter Plea of Guilty set forth in Appendix B should avoid these problems."

142. Comments on Rule 15.03, Subd. 1.

Amend the seventh paragraph of the comments on Rule 15 as follows:

"Under Rule 15.03, subd. 1, the inquiry upon entry of a guilty plea may be conducted by the court, defense counsel or the prosecutor as the court may direct. The questioning shall cover in substance the defendant's knowledge of the

offense charged; the potential sentence; and the waiver of ~~his~~ the defendant's rights to counsel, to a jury trial, to confront witnesses, to subpoena witnesses, to remain silent, to the presumption of innocence, and to require proof of guilt beyond a reasonable doubt. The court shall also ask the defendant whether ~~he~~ the defendant understands the nature of the offense charged and whether ~~he~~ the defendant believes that what ~~he~~ the defendant did constitutes the offense to which ~~he~~ the defendant is pleading guilty. The court shall determine whether there is a factual basis for the plea. Since even this minimal inquiry, if conducted for each defendant, would cause much delay and repetition, alternative methods are provided by Rule 15.03, subd. 2. Where a number of defendants are to be arraigned consecutively and are all present in the courtroom, Rule 15.03, subd. 1 provides that the court may advise them as a group of the possible consequences of a guilty plea and of their constitutional rights. If this procedure is followed, each defendant when appearing individually before the court must be asked whether ~~he~~ the defendant heard and understood the earlier statement by the court. ~~He~~ The defendant must then be individually questioned as to ~~whether he waives~~ waiver of the constitutional rights previously explained; as to ~~whether he understands~~ understanding the nature of the offense charged; as to ~~whether he believes~~ believing that what ~~he~~ the defendant did constitutes the offense to which ~~he~~ the defendant is pleading guilty; and as to the factual basis for ~~his~~ the plea. To further save time, the statement of rights required by Rule 5.01 upon a defendant's first appearance in court may be combined with the questioning required by this rule."

143. Comments on Rule 15.03, Subd. 2(2).

Amend the fourth sentence of the eighth paragraph of the comments on Rule 15 as follows:

"When properly completed the petition may be filed by either the defendant or ~~his~~ defense counsel and it is not necessary for the defendant to personally appear in court when the petition is presented to the court."

144. Comments on Rule 15.04.

Amend the tenth and eleventh paragraphs of the comments on Rule 15 as follows:

"Rule 15.01, ~~subds.~~ parts 10, 11, 12, following ABA Standards, Pleas of Guilty, 1.5 (Approved Draft, 1968), requires the court to ascertain whether there has been a

plea agreement, what it is, whether the defendant understands it and also understands that if the court disapproves the agreement, the defendant has the absolute right to withdraw ~~his~~ the plea. Under Rule 15.04, subd. 3(1), the court shall advise the defendant if the plea agreement is rejected (unless the court decides to postpone approval or rejection until the pre-sentence report is received), and shall give ~~him~~ the defendant an opportunity to withdraw ~~his~~ the plea, if one has been entered.

"Rule 15.04, subd. 1 regarding the propriety of plea discussions and agreements follows the language of ABA Standards, Pleas of Guilty, 3.1(a) (Approved Draft, 1968). Instead of specifying what the subject matter of a plea agreement shall be (See ABA Standards, Pleas of Guilty, 3.1(b) (Approved Draft, 1968)) Rule 15.04, subd. 1 refers to the more general considerations which under Rule 15.04, subd. 3(2) shall govern the prosecuting attorney in ~~his determination~~ determining whether to enter into a plea agreement."

145. Comments on Rule 15.04, Subd. 3(1).

Amend the last sentence of the thirteenth paragraph of the comments on Rule 15 as follows:

"Whenever the court rejects the plea agreement, whether on tender of plea or after receipt of the pre-sentence report, or after plea, the court shall so inform the defendant and give ~~him~~ the defendant an opportunity to affirm or withdraw the plea, if entered, and if the defendant has made factual disclosures tending to disclose ~~his~~ guilt of the offense charged, the judge should disqualify himself or herself from the trial of the case."

146. Comments on Rule 15.07.

Amend the third paragraph from the end of the comments on Rule 15 by adding the following language at the end of that paragraph:

"However, if the indictment or complaint is not amended the rule requires that for felonies the reduction of the charge must be done in writing or on the record. If it is done only on record the proceedings must be transcribed and filed to assure that the court file will always reflect the disposition of all felony charges."

147. Comments on Rule 15.08.

Amend the second paragraph from the end of the comments on Rule 15 as follows:

"Rule 15.08 permits a plea of guilty ~~in felony and gross misdemeanor cases,~~ to a different offense than that charged in the original complaint, tab charge or indictment with the consent of the defendant and prosecuting attorney. In that event for felonies and gross misdemeanors, other than those under Minn. Stat. §169.121 or Minn. Stat. §169.129, a new complaint shall be filed, but need not be made on oath and need not provide evidence establishing probable cause. (See also Rule 11.06). In misdemeanor cases and gross misdemeanor cases under Minn. Stat. §169.121 or Minn. Stat. §169.129, the procedure is also permitted, but the defendant will be tab charged with the new offense as provided by Rule 4.02, subd. 5(3), and the original charge or charges will be dismissed upon entry of the guilty plea to the new charge."

148. Comments on Rule 15.10

Amend the comments on Rule 15 by adding the following paragraph at the end of the existing comments:

"Rule 15.10, which permits a defendant to plead guilty to misdemeanor, gross misdemeanor, or felony offenses from other jurisdictions in certain circumstances, is based on Unif. R. Crim. P. 444(e) (1987). It is similar to Rule 5.04, subd. 2, which previously authorized such pleas in misdemeanor cases, but is broader in that such pleas are permitted after a verdict or finding of guilty as well as after a guilty plea. Before proceeding under this rule, it is necessary for the prosecuting attorney having authority to charge the offense to charge the defendant in the jurisdiction having venue. This may be done by complaint or indictment or, for misdemeanors or for gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129 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."

149. Rule 17.01. Prosecution by Indictment, Complaint or Tab Charge.

Amend the last sentence of the first paragraph of this rule as follows:

"Misdemeanors and gross misdemeanors under Minn. Stat. §169.121 or Minn. Stat. §169.129 may also be prosecuted by tab charge."

150. Rule 17.03, Subd. 3. Severance of Offenses or Defendants.

Amend this rule as follows:

"Subd. 3. Severance of Offenses or Defendants. Misjoinder of offenses or charges or defendants shall not be grounds for dismissal, but on motion, offenses or defendants improperly joined shall be severed for trial.

(1) Severance of Offenses. On motion of the prosecuting attorney or the defendant, the court shall 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 upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the defendant's guilt or innocence of each crime.

(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On motion of a defendant for severance from codefendant because a codefendant's out-of-court statement refers to, but is not admissible against, the defendant, the court shall determine whether the prosecuting attorney intends to offer the statement as evidence as part of its case in chief. If so, the court shall require the prosecuting attorney 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 received in evidence only after all references to the defendant have been deleted, if admission of the statement with the deletions will not prejudice the defendant; or

(c) severance of the defendant.

(3) Severance of Defendants During Trial. The court shall sever defendants during trial with the defendant's consent or upon a finding of manifest necessity, if the court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the defendants."

151. Rule 17.03, Subd. 4. Consolidation of Indictments, Complaints or Tab Charges for Trial.

Amend the first sentence of this rule as follows:

"The court on motion of the prosecution or on its ~~own motion~~ initiative may order two or more indictments, complaints, tab charges or any combination thereof to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single indictment, complaint or tab charge."

152. Rule 17.03, Subd. 5. Dual Representation.

Amend part (2) of this rule as follows:

"(2) The court shall elicit from each defendant in a narrative statement that the defendant has been advised of ~~his~~ the right to effective representation; that the defendant understands the details of ~~his~~ defense counsel's possible conflict of interest and the potential perils of such a conflict; that the defendant has discussed the matter with ~~his~~ defense counsel, or if ~~he~~ the defendant wishes with outside counsel and that ~~he~~ the defendant voluntarily waives ~~his~~ the Sixth Amendment protections."

153. Rule 17.06, Subd. 4. Effect of Determination of Motion To Dismiss.

Amend this rule as follows:

"Subd. 4. Effect of Determination of Motion to Dismiss

(1) Motion Denied. If a motion to dismiss the indictment, complaint or tab charge is determined adversely to the defendant, ~~he~~ the defendant shall be permitted to plead if ~~he~~ the defendant has not previously pleaded. A plea previously entered shall stand. The defendant in a misdemeanor case may continue to raise the issues on appeal if ~~he is~~ convicted following a trial.

(2) Grounds for Dismissal. When a motion to dismiss an indictment, complaint or tab charge is granted for a defect in the institution of prosecution or in the indictment, complaint or tab charge, the court shall specify the grounds upon 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 shall not be barred, and the court shall on motion of the prosecuting attorney, made within seven (7) days after notice of the entry of the order granting the motion to dismiss, 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 might be required under Rule 6.02, subd. 1, then ~~he~~ the defendant must be released subject to such non-monetary conditions as the court deems appropriate under that rule. The specified time for such amended or new indictment or complaint shall not exceed sixty (60) days for filing a new indictment or seven (7) days for amending an indictment or complaint or for filing a new complaint. During the seven-day period for making the motion and during the time specified by the order, if such motion is made, dismissal of the indictment or complaint shall be stayed. If the prosecution does not make the motion within the seven-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 by the order, the defendant shall be discharged and further prosecution for the same offense shall be barred unless the prosecution has appealed as provided by law, or unless 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 cases and also in gross misdemeanor cases under Minn. Stat. §169.121 or Minn. Stat. §169.129 dismissed for failure to file a timely complaint within the thirty (30) day time limit pursuant to Rule 4.02, subd. 5(3), further prosecution shall not be barred unless additionally a judge or judicial officer of the court has so ordered."

154. Comments on Rule 17.01.

Amend the third paragraph of the comments on Rule 17 as follows:

"Under Rule 17.01, a misdemeanor and also a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129 may be prosecuted by complaint or by tab charge (See Rule 4.02, subd. 5(3)) under these rules. ~~A~~

~~misdemeanor~~ These offenses may also be prosecuted by indictment and, in such cases, rules applicable to indictments shall apply."

155. Comments on Rule 17.03, Subd. 2.

Amend the fifteenth paragraph of the comments on Rule 17 as follows:

"Rule 17.03, subd. 2(2), governing the joinder of defendants in misdemeanor cases, adopts the provisions of Minn. Stat. §631.03 (repealed, 1979 c 233 §42) which ~~permits~~ permitted the joinder of two or more defendants when they are jointly charged with the commission of an offense. ~~The provisions of §631.03 governing severance or a joint trial of defendants jointly charged with an offense are continued.~~ Severance of offenses or defendants already joined is governed by Rule 17.03, subd. 3."

156. Comments on Rule 17.03, Subd. 3.

Amend the sixteenth paragraph of the comments on Rule 17 as follows:

"Rule 17.03, subd. 3, providing that improper joinder of offenses or defendants is not a ground for dismissal but only for mandatory severance, abrogates Minn. Stat. §630.23(3) which lists misjoinder of offenses as a ground for demurrer. When defendants are properly already joined, severance is governed by Rule 17.03, subd. 2 and Rule 17.03, subd. 3. Part (1) of Rule 17.03, subd. 3, concerning severance of offenses is taken from Unif. R. Crim. P. 472(a) (1987) which is based on ABA Standards for Criminal Justice 13-3.1(a) and (b) (1985). Part (2) of the rule, concerning severance of defendants because of out-of-court statements by a codefendant, is taken from Unif. R. Crim. P. 472 (b)(1)(1987) which is based on ABA Standards for Criminal Justice 13-3.2(a)(1985). Part (3) of the rule, concerning severance of defendants during trial is taken from Unif. R. Crim. P. 472(b)(2)(ii) (1987) which is based on ABA Standards for Criminal Justice 13-3.2(b)(ii) (1985)."

157. Comments on Rule 17.06, Subd. 4.

Amend the third sentence of the twenty-sixth paragraph of the comments on Rule 17 as follows:

"Rule 17.06, subd. 4(1) provides that if a defendant's motion to dismiss is denied in a misdemeanor case ~~he~~ the

defendant may continue to raise the issue involved in the motion on direct appeal if ~~he is~~ convicted following a trial."

158. Comments on Rule 17.06, Subd. 4.

Amend the twenty-seventh paragraph of the comments on Rule 17 as follows:

"The first sentence of Rule 17.06, subd. 4, that if a motion to dismiss is decided adversely to the defendant, ~~he~~ the defendant shall be permitted to plead if ~~he~~ the defendant has not already done so and that a plea previously entered shall stand, is taken from F.R.Crim.P. 12(b)(5) and takes the place of similar provisions in Minn.Stat. §§ 630.19, 630.26 (1971). (See also Rule 11.10.) This rule contemplates that a defendant may plead not guilty and also make a motion to dismiss if ~~he~~ the defendant wishes.

159. Comments on Rule 17.06, Subd. 4.

Amend the twenty-eight paragraph of the comments on Rule 17 as follows:

"The balance of Rule 17.06, subd. 4 relating to the effect of a determination to dismiss the indictment, tab charge or complaint supersedes Minn. Stat. §§630.19-630.21, 630.25(1971) and provides uniformity for that purpose. The rule is based on F.R.Crim.P. 12(h)(b). (See also Rule 3.04, subd. 2.)

160. Comments on Rule 17.06, Subd. 4.

Amend the second sentence in the next to last paragraph of the comments on Rule 17 as follows:

"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 and also for gross misdemeanor cases under Minn. Stat. §169.121 or Minn. Stat. §169.129 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."

161. Comments on Rule 17.06, Subd. 4.

Amend the second sentence of the last paragraph of the comments on Rule 17 as follows:

"~~If the~~ A defendant who cannot post bail in a misdemeanor case, ~~he~~ must be released subject to such nonmonetary conditions as the court deems appropriate under Rule 6.02, subd. 1."

162. Comments on Rule 17.06, Subd. 4.

Amend the fourth and fifth sentences in the last paragraph of the comments on Rule 17 as follows:

"However, in misdemeanor cases and also in gross misdemeanor cases under Minn. Stat. §169.121 and Minn. Stat. §169.129 dismissed for failure to file a timely complaint within thirty (30) days pursuant to Rule 4.02, subd. 5(3), further prosecution is not automatically barred, but is barred only if so ordered by the court. If ~~a misdemeanor~~ such a case is dismissed for failure to issue a complaint, but the 30-day time limit established by Rule 4.02, subd. 5(3), has not yet run, the prosecutor may still issue the complaint within the 30-day time limit even without bringing a motion under Rule 17.06, subd. 4(3)."

163. Rule 18.01, Subd. 1. When Summoned.

Amend this rule as follows:

"Subd. 1. When Summoned. The district court, without regard to the beginning or ending of a term of court, shall order that one or more grand juries be drawn at least annually. The grand jury shall be summoned and convened whenever required by the public interest or whenever requested by the county attorney. Upon being drawn, each juror shall be notified of ~~his~~ selection. The court shall prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel shall be filled in the same manner as provided by this rule."

164. Rule 18.02, Subd. 2. Motion to Dismiss Indictment.

Amend this rule as follows:

"Subd. 2. Motion to Dismiss Indictment. A motion to dismiss an indictment may be based upon any of the following grounds: that the grand jury was not selected, drawn or summoned in accordance with law; or that an individual

juror is not legally qualified or that ~~his~~ the juror's state of mind prevented ~~him~~ the juror from acting impartially. An indictment shall not be dismissed on the ground that one or more of the grand jurors was not legally qualified if it appears from the jury's records that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment."

165. Rule 18.04. Who May be Present.

Amend this rule as follows:

"Rule 18.04. Who May be Present

Attorneys for the State, the witness under examination, interpreters when needed, 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, but no person other than the jurors may be present while the grand jury is deliberating or voting. Upon order of court and a showing of necessity for the purpose of security, a designated peace officer may be present while a specified witness is testifying. If a witness before the grand jury so requests and has effectively waived ~~his~~ immunity from self-incrimination or has been granted use immunity, ~~his~~ the attorney for the witness may be present while the witness is testifying, provided the attorney is then and there available for that purpose or ~~his~~ the attorney's presence can be secured without unreasonable delay in the grand jury proceedings. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the witness while ~~he~~ the witness is testifying."

166. Rule 18.05. Record of Proceedings.

Amend this rule as follows:

"Rule 18.05. Record of Proceedings

Subd. 1. Verbatim Record. A verbatim record shall be made by a reporter or recording instrument of the evidence taken before the grand jury and of all statements made and events occurring ~~while a witness is~~ before the grand jury except during deliberations and voting of the grand jury. The required verbatim record shall not include the name of any grand juror. The record shall not be disclosed except to the court or prosecuting attorney or unless the court, upon motion by the defendant for good cause shown, or upon 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

thereof to the defendant or ~~his attorneys~~ defense counsel.

Subd. 2. Transcript. Upon motion of the defendant with notice to the prosecuting attorney, the district court at any time before trial shall, subject to such protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of: (1) any recorded testimony of the defendant before the grand jury in the case against the defendant; (2) the recorded testimony of any persons before the grand jury whom the prosecution intends to call as witnesses at the defendant's trial; or (3) the recorded testimony of any witness before the grand jury in the case against the defendant, provided that at the hearing on the motion, defense counsel makes an offer of proof showing that ~~he~~ the defendant expects to call the witness at the trial and that ~~he~~ the witness will give relevant testimony favorable to the defendant."

167. Rule 18.06, Subd. 1. Admissibility of Evidence.

Amend part (2) of this rule as follows:

"(2) A report or a copy of a report made by a person who is 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 ~~him~~ the person in connection with the investigation of the case against the defendant may, when certified by such person as a report made by ~~him~~ the person or as a true copy thereof, be received as evidence of the facts stated therein."

168. Rule 18.07. Finding and Return of Indictment.

Amend this rule as follows:

"Rule 18.07. Finding and Return of Indictment

An indictment may be found only upon the concurrence of 12 or more jurors. When so found, it shall be signed by the ~~foreman~~ foreperson, whether ~~he~~ the foreperson be one of the 12 concurring or not, and delivered to a judge in open court. If 12 jurors shall not concur in finding an indictment, the ~~foreman~~ foreperson shall so report in writing to the court forthwith, and any charges filed against the defendant for the offenses considered and upon which no indictment was returned shall be dismissed. The failure to find an indictment or the dismissal of the charge shall not prevent the case from again being submitted to a grand jury as often as the court shall direct."

169. Rule 18.08. Secrecy of Proceedings.

Amend this rule as follows:

"Rule 18.08. Secrecy of Proceedings

Every grand juror shall keep secret whatever ~~he~~ that juror or any other juror has said during ~~its~~ deliberations and how ~~he~~ that juror or any other juror has voted. Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of ~~his~~ the prosecuting attorney's duties, and to the defendant or ~~his attorneys~~ defense counsel pursuant to Rule 18.05 of this rule governing the record of the grand jury proceedings. Otherwise, no juror, attorney, interpreter, stenographer, reporter, operator of a recording device, typist who transcribes recorded testimony, clerk of court, law enforcement officer, or court attache may disclose matters occurring before the grand jury except when directed by the court preliminarily to or in connection with a judicial proceeding. Unless the court directs otherwise, no person shall disclose the finding of an indictment until the defendant is in custody or appears before the court except when necessary for the issuance and execution of a summons or warrant, provided, however, disclosure may be made by the prosecuting attorney by notice to the defendant or ~~his attorney~~ defense counsel of the indictment and the time of defendant's appearance in the district court, if in the discretion of the prosecuting attorney such notice is sufficient to insure defendant's appearance."

170. Comments on Rule 18.04.

Amend the thirteenth paragraph of the comments on Rule 18 as follows:

"Rule 18.04 also permits the presence of the following: interpreters when needed; reporters or operators of a recording instrument to make the record required by Rule 18.05, subd. 1 (see F.R.Crim.P. 6(d)); a designated peace officer; and the attorney for a witness who has either effectively waived ~~his~~ immunity from self-incrimination or been granted use immunity by the court."

171. Comments on Rule 18.05.

Amend the fourteenth and fifteenth paragraphs of the comments on Rule 15 as follows:

"Rule 18.05, subd. 1, providing for a verbatim record of ~~the evidence taken~~ all statements made and events occurring before the grand jury except during deliberations and voting, supercedes that portion of Minn. Stat. §628.57 (1971) which provided ~~provides~~ that the minutes of the evidence taken before the grand jury shall not be preserved. (Minn. Stat. §§ ~~628.64,~~ 628.65, 628.66 (1971) are not affected.) ~~This rule does not require the recording of statements made or events occurring when no witness is present. However, under State v. Heil, 315 N.W.2d 592 (Minn. 1982) it is not in conflict with the rule for a particular judicial district to require that such statements or events be recorded.~~ This rule as amended is similar to the special rule of practice for the First Judicial District which was upheld by the Supreme Court in State v. Heil, 315 N.W.2d 592 (Minn. 1982) as being consistent with the original language of Rule 18.05. The purpose of rule 18.05 as amended is to assure that everything said or occurring before the grand jury will be recorded except during deliberations and voting. This would include any statements made by the prosecuting attorney to the grand jury whether or not any witnesses are present. However, the names of the grand jurors are not to be recorded. Of course, under Rule 18.04 only grand jury members may be present during deliberations and voting."

"Under Rule 18.05, subd. 1, the record may be disclosed to the court or to the prosecuting attorney, and to the defendant for good cause (This would include a "particularized need." Dennis v. United States. 384 U.S. 855, 869-870 (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 prosecuting attorney any portions of the grand jury proceedings already transcribed and possessed by the prosecuting attorney."

172. Comments on Rule 18.07.

Amend the twentieth and twenty-first paragraphs of the comments on Rule 18 as follows:

"Rule 18.07 adopts the substance of Minn. Stat. § 628.08 (1971) except that the indictment shall bear only the signature of the ~~foreman~~ foreperson instead of ~~his~~ the foreperson's signed endorsement that it is a true bill. The requirement of Rule 18.07 that an indictment be "delivered to a judge in open court" is not inconsistent with the general requirement of Rule 18.08 that no person shall disclose the finding of an indictment until the defendant is in custody or appears before the court. Delivery of the

indictment does not mean that it must be read or disclosed in court. Also under Rule 33.04 the prosecuting attorney may request the court to delay the filing of the indictment until the arrest of the defendant involved.

"The provision that if an indictment is not voted, the ~~foreman~~ foreperson shall so report to the court forthwith in writing (See F.R.Crim.P. 6(f).) ~~is~~ was not contained in Minn. Stat. § 628.08 (Repealed, 1979 c 233 §42)."

173. Comments on Rule 18.08.

Amend the first sentence of the twenty-third paragraph of the comments on Rule 18 as follows:

"That part of the second sentence of Rule 18.08 providing for disclosures to the prosecuting attorney for use in the performance of ~~his~~ the prosecuting attorney's duties comes from F.R.Crim.P. 6(e)."

174. Comments on Rule 18.08.

Amend the last sentence of the twenty-fourth paragraph of the comments on Rule 18 as follows:

"The rule, however, leaves it to the discretion of the prosecuting attorney to determine whether to notify the defendant or ~~his attorney~~ defense counsel of the indictment without the issuance of a warrant or summons."

175. Rule 19.01. Issuance.

Amend the second paragraph of this rule as follows:

"If the defendant is in custody, the court may order the officer having the defendant in custody to bring ~~him~~ the defendant before the court at a specified time and date."

176. Rule 19.02, Subd. 1. Warrant.

Amend this rule as follows:

"Subd. 1. Warrant. The warrant shall be signed by the judge; shall contain the name of the defendant or, if ~~his~~ that name is unknown, any name or description by which ~~he~~ the defendant can be identified with reasonable certainty; shall describe the offense charged in the indictment; and shall command that the defendant be arrested and brought before the court. The amount of bail and other conditions

of release may be set by the court and endorsed on the warrant."

177. Rule 19.04. Appearance of Defendant Before Court.

Amend this rule as follows:

"Rule 19.04. Appearance of Defendant Before Court

Subd. 1. Appearance. The defendant shall be taken promptly before the district court which issued the warrant.

Subd. 2. Statement to Defendant. ~~When the~~ A defendant appearing initially ~~appears~~ before the district court under a warrant of arrest or in response to a summons, ~~he~~ shall be advised of the charges ~~against him~~. If ~~he~~ the defendant has not received a copy of the indictment, ~~he~~ the defendant shall be provided with a copy.

The court shall also advise the defendant substantially as required by Rule 5.01.

Subd. 3. Appointment of Counsel. If the defendant is not represented by counsel and is financially unable to afford counsel, the court shall appoint counsel for ~~him~~ the defendant."

Subd. 4. Date for Arraignment. Upon defendant's initial appearance before the district court, ~~he~~ the defendant may be arraigned, upon ~~his~~ the defendant's request and with the consent of the court. If the defendant is not arraigned at the initial appearance, a date shall be set for ~~his~~ the arraignment upon the indictment not more than seven (7) days from the date of such initial appearance. The time for appearance may be extended by the district court for good cause. Upon defendant's arraignment, whether at ~~his~~ the initial appearance or at some later appearance prior to the Omnibus Hearing, ~~he~~ the defendant may only enter a plea of guilty. ~~If he~~ A defendant who does not wish to plead guilty, ~~he~~ shall not be called upon to enter any other plea and the arraignment shall be continued until the Omnibus Hearing when pursuant to Rule 11.10 ~~he~~ the defendant shall plead to the indictment or be given additional time within which to plead.

Subd. 5. Omnibus Hearing Date and Procedure. If upon arraignment, the defendant does not plead guilty, a date shall be fixed, not more than seven (7) days from the date of the arraignment, unless the court for good cause ~~shown~~ related to the particular case, upon motion of the prosecuting attorney or the defendant or upon the court's initiative, extends the time, when an Omnibus Hearing shall

be held in accordance with Rule 11.

Subd. 6. Notice by Prosecuting Attorney.

(1) Notice of Evidence and Identification Procedures. When the prosecution has (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 the result of confessions, admissions or statements in the nature of confessions made by the defendant, or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney, on or before the date set for defendant's arraignment, shall notify the defendant or ~~his~~ defense counsel in writing of such evidence and identification procedures.

(2) Notice of Additional Offenses. The prosecuting attorneys shall notify the defendant or ~~his~~ defense counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. The notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offense becomes known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which the defendant has been previously prosecuted, or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged in the indictment arose.

Subd. 7. Discovery. Before the date set for the Omnibus Hearing the prosecution and defendant shall complete the discovery that is required by Rules 9.01, subd. 1 and 9.02, subd. 1 to be made without the necessity of an order of court."

178. Comments on Rule 19.01.

Amend the second paragraph of the comments on Rule 19 as follows:

"Rule 19.01 provides for the issuance of a warrant of arrest or summons upon an indictment when requested by the prosecuting attorney, and a summons shall be issued when directed by the court. (See F.R.Crim.P. 9(a).) (Rule 19.01 takes the place of Minn.Stat. §§ 630.02, 630.03 (1971) providing for bench warrants.) (See also Rule 18.08 providing for notice to the defendant or ~~his attorney~~ defense counsel at the discretion of the prosecuting attorney.)"

179. Comments on Rule 19.04.

Amend the eleventh paragraph of the comments on Rule 19 as follows:

"Upon the defendant's first appearance before the district court under Rule 19.04, ~~he~~ the defendant shall be advised of the charges ~~against him~~; provided with a copy of the indictment; given the advice required by Rule 5.01; counsel shall be appointed for ~~him if he~~ a defendant who is unrepresented and unable to afford counsel (Rule 19.04, subd. 3); the bail or conditions of ~~his~~ release set, continued, or modified in accordance with the provisions of Rule 6.02 (Rule 19.05); and a date shall be fixed for arraignment (Rule 13), which shall be held not more than 7 days after ~~his~~ the appearance in district court, unless the time is extended for good cause. (Rule 19.04, subd. 5). Instead of having a separate arraignment, Rule 19.04, subd. 4, permits the arraignment and initial appearance to be consolidated. This is possible only if requested by the defendant and agreed to by the court. Ordinarily, the Omnibus Hearing would then be held within seven (7) days after the consolidated initial appearance and arraignment under Rule 19.04, subd. 5, but that rule also permits the court to extend that time for good cause."

consolidated. This is possible only if requested by the defendant and agreed to by the court. Ordinarily, the Omnibus Hearing would then be held within seven (7) days after the consolidated initial appearance and arraignment under Rule 19.04, subd. 5, but that rule also permits the court to extend that time for good cause."

180. Comments on Rule 19.04.

Amend the thirteenth paragraph of the comments on Rule 19 as follows:

"Upon the date fixed for arraignment, the defendant shall be arraigned as provided by Rule 13. If ~~he~~ the

defendant does not plead guilty, a date shall be fixed for the Omnibus Hearing under Rule 11, which shall be held not more than 7 days from the date of the arraignment unless extended for good cause. (Rule 19.04, subd. 4 and subd. 5)."

181. Rule 20.01. Competency to Proceed.

Amend this rule as follows:

"Rule 20.01. Competency to Proceed

Subd. 1. Competency to Proceed Defined. A defendant shall not be permitted to waive counsel who lacks sufficient ability to knowingly, voluntarily, and intelligently waive the constitutional right to counsel, to appreciate the consequences of the decision to proceed without representation by counsel, to comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case. The court may not proceed under this rule before a lawyer consults with the defendant and the lawyer has an opportunity to be heard by the court. ~~No person~~ A defendant shall not be permitted to enter a plea or be tried or sentenced for any offense if the defendant:

(1) lacks sufficient ability to consult with a reasonable degree of rational understanding with defense counsel; or

(2) is ~~while~~ mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in ~~his~~ the defense.

Subd. 2. Proceedings. If during the pending proceedings, the prosecuting attorney, defense counsel or the court has reason to doubt the competency of the defendant, the prosecuting attorney or defense counsel by motion or the court on its initiative shall raise that issue. Any such motion may be brought over the objection of the defendant. The motion shall set forth the facts constituting the basis for the motion, but defense counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by defense counsel does not waive the attorney-client privilege. If the court in which a criminal case is pending determines upon motion of the prosecuting attorney, or defense counsel, ~~or on its own motion~~ or upon initiative of the court that there is reason to doubt the defendant's competency as defined by this rule, the court shall suspend the criminal proceedings and shall proceed as follows:

(1) Misdemeanors. If the charge is a

misdemeanor, the court having trial jurisdiction shall either proceed according to this rule, or cause civil commitment proceedings to be instituted against the defendant, or unless contrary to the public interest, dismiss the case.

(2) Probable Cause-Felony or Gross Misdemeanor. In the case of a felony or gross misdemeanor, unless the issue of probable cause has previously been determined, the district court, upon motion, before proceeding further shall determine whether there is sufficient probable cause stated on the face of the complaint. If the court determines that the complaint does not state sufficient probable cause to believe the defendant committed the offense charged, the charges against the defendant shall be dismissed.

(3) Medical Examination. The court shall appoint at least one ~~qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness~~ examiner as defined in the Minnesota commitment act of 1982, Minn. Stat. Ch. 253B, or successor statute to examine the defendant and to report to the court on ~~his~~ the defendant's mental condition.

If the defendant is otherwise entitled to release, confinement for the examination may not be ordered if the examination can be done adequately on an outpatient basis. The court may make appearance for the outpatient examination a condition of the defendant's release. If the examination cannot be adequately done on an outpatient basis or if the defendant is not otherwise entitled to be released, the ~~The~~ court may order the defendant confined in a state mental hospital or other suitable hospital or facility for the purpose of such examination for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted to

observe the examination and to ~~conduct his own examination of~~ also examine the defendant. The court shall further direct that if any of the mental-health professionals appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention, the mental-health professional shall promptly notify the prosecuting attorney, defense counsel, and the court.

(4) Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and ~~he~~ the judge shall cause copies of the report to be delivered forthwith to the prosecuting attorney and to defense counsel. The contents of the report shall not be otherwise disclosed until the hearing on the defendant's competency. The report of the examination shall ~~contain~~ include without limitation:

(1) A diagnosis of the mental condition of the defendant.

(2) If the defendant is mentally ill or mentally deficient, an opinion as to: (a) ~~his~~ the defendant's capacity to understand the criminal proceedings ~~against him~~ and to participate in ~~his~~ the defense; (b) ~~the extent of his homicidal tendencies, if any, and the degree of likelihood that he will engage in seriously harmful conduct~~ whether the defendant presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention; (c) the treatment required, if any, for the defendant to attain or maintain competence with an explanation of the appropriate treatment alternatives by order of choice, including the extent to which ~~he~~ the defendant can be treated without being committed to an institution and the reasons for rejecting such treatment if institutionalization is recommended; and (d) whether there is a substantial

probability that with treatment or otherwise ~~he~~ the defendant will ever attain the competency to proceed, and if so, in approximately what period of time, and the availability of the various types of acceptable treatment in the local geographical area, specifying the agencies or settings in which the treatment might be obtained and whether it would be available to an outpatient.

(3) A statement of the factual basis upon which the diagnosis and opinion are based.

(4) If the examination could not be conducted by reason of the defendant's unwillingness to participate therein, a statement to that effect with an opinion, if possible, as to whether the defendant's unwillingness was the result of mental illness or deficiency.

Subd. 3. Hearing and Determination of Competency.

(1) Request for Hearing. If either party files written objections to the report within ten (10) days after the receipt of a copy thereof, the court, upon notice to the parties, shall hold a hearing on the issue of the defendant's competency to proceed.

(2) Going Forward with Evidence. If the defense moved for the examination, the defense shall go forward first with evidence at the hearing. If the examination was on motion of the prosecuting attorney or on the initiative of the court, the prosecuting attorney shall go forward first with evidence unless the court otherwise directs.

(3) Report and Evidence. At the hearing, evidence as to the defendant's mental condition may be admitted, including the report of the person who examined the defendant at the direction of the court. The person who prepared the report or any individual designated by that person 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 as such by either party.

(4) Defense Counsel as Witness. To the extent that doing so does not divulge communications in violation of the attorney-client privilege, defense counsel may relate to the court, subject to examination by the prosecuting attorney, personal observations of and conversations with the defendant. Those

disclosures do not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel concerning the attorney-client relationship and the defendant's ability to communicate effectively with defense counsel. However, the court may not require defense counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine defense counsel responding to the court's inquiry.

(5) Determination Without Hearing. If neither the prosecution nor the defense files written objections to the report within the ten-day period, the court without a hearing may determine the defendant's competency to proceed upon the basis of the report.

(6) Decision and Sufficiency of Evidence. If upon consideration of the report and the evidence received at any hearing, the court finds by the greater weight of the evidence that the defendant is competent, the court shall enter an order finding that the defendant is competent. Otherwise, the court shall enter an order finding that the defendant is incompetent.

Subd. 4. Effect of Finding on Issue of Competency to Proceed.

(1) Finding of Competency. If the court determines that the defendant is competent to proceed, the criminal proceedings against ~~him~~ the defendant shall be resumed.

(2) Finding of Incompetency. If the charge against the defendant is a misdemeanor and the court determines that ~~he~~ the defendant is incompetent to proceed, the charge shall be dismissed. If the charge against the defendant is a gross misdemeanor or felony and the court determines that the defendant is incompetent to proceed, the criminal proceedings against ~~him~~ the defendant shall be further suspended except as provided by Rule 20.01, subd. 6.

(a) Finding of Mental Illness. If the court determines that the defendant is mentally ill so as to be incapable of understanding the criminal proceedings ~~against him~~ or participating in ~~his~~ the defense, and the defendant is under civil commitment as mentally ill, the court shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against ~~him~~ the defendant. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule

20.01, subd. 5.

(b) Finding of Mental Deficiency. If the court finds the defendant to be mentally deficient so as to be incapable of understanding the criminal proceedings ~~against him~~ or participating in ~~his~~ the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court shall order ~~him~~ the defendant remanded to the care and custody of the commissioner, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against ~~him~~ the defendant. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule 20.01, subd. 5.

(c) Appeal. Either party shall have the right of appeal to the Court of Appeals from a determination of the probate court upon the civil commitment proceedings. The appeal shall be on the record only pursuant to Rule 28. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

Subd. 5. Continuing Supervision by the Court in Felony and Gross Misdemeanor Cases. The head of the institution to which the defendant is committed under civil commitment proceedings, or if the defendant is not committed to an institution, the officer or other person charged with ~~his~~ the defendant's supervision or to whom ~~he~~ the defendant has been committed, shall report periodically to the trial court, at such times as the court shall provide, on the defendant's mental condition with an opinion as to ~~his~~ the defendant's competency to proceed. The reports shall be made not less than once every six months unless otherwise ordered. Copies of the reports shall be furnished to the prosecuting attorney and to defense counsel.

When the court on application of the prosecuting attorney, defense counsel, the defendant, or the person having supervision over the defendant, or on the court's ~~own motion~~ initiative, determines, after a hearing with notice to the parties, that the defendant is competent to proceed, the criminal proceedings against the defendant shall be resumed. Unless the criminal charges against the defendant have been dismissed as provided by Rule 20.01, subd. 6, the trial court and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed

changes in the defendant's civil commitment or status.

Subd. 6. Dismissal of Criminal Proceedings. Except when the defendant is charged with murder, the criminal proceedings ~~against him~~ shall be dismissed upon the expiration of three years from the date of the finding of ~~his~~ the defendant's incompetency to proceed unless the prosecuting attorney, before the expiration of the three-year period, files a written notice of ~~his~~ intention to prosecute the defendant when ~~he~~ the defendant has been restored to competency.

Subd. 7. Determination of Legal Issues Not Requiring Defendant's Participation. The fact that the defendant is incompetent to proceed shall not preclude ~~his~~ defense counsel from making any legal objection or defense which is susceptible of fair determination before trial without the personal participation of the defendant.

Subd. 8. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by ~~him~~ the defendant for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence at the proceedings to determine whether ~~he~~ the defendant is competent to proceed.

Subd. 9. Credit for Time Spent in Confinement. If the court orders criminal proceedings resumed on a finding that defendant is competent to proceed, and the defendant is convicted of the charge, the time ~~he~~ the defendant has spent confined to a hospital or other facility under this rule shall be credited upon any jail or prison sentence imposed ~~upon him~~."

182. Rule 20.02. Medical Examination of Defendant Upon Defense of Mental Deficiency or Mental Illness.

Amend this rule as follows:

"Rule 20.02. Medical Examination of Defendant Upon Defense of Mental Deficiency or Mental Illness

Subd. 1. Authority of Court to Order Examination. The court having trial jurisdiction over the offense charged may order a mental examination of the defendant when the defense has notified the prosecuting attorney pursuant to Rule 9.02, subd. 1(3)(a) of an intention to assert a defense of mental illness or deficiency, when the defendant in a misdemeanor case pleads not guilty by reason of mental illness or mental deficiency, or when at the trial of the case, the defendant offers evidence of such mental condition.

Subd. 2. Examination of the Defendant. If the court orders a mental examination of the defendant, it shall appoint at least one ~~qualified psychiatrist, or clinical psychologist, or physician experienced in the field of mental illness~~ examiner as defined in the Minnesota commitment act of 1982, Minn. Stat. Ch. 253B, or successor statute to examine the defendant and report upon ~~his~~ the defendant's mental condition. For the purpose of the examination, the court, upon a special showing of need therefor, may order the defendant to be confined to a hospital or other suitable facility for a specified period not to exceed 60 days. If the defendant or prosecution has retained ~~a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness~~ an examiner as defined in the Minnesota commitment act of 1982, Minn. Stat. Ch. 253B, or successor statute, the court on request of the defendant or prosecuting attorney shall direct that such ~~psychiatrist or psychologist or physician~~ examiner be permitted to observe the mental examination and to conduct ~~his own~~ a mental examination of the defendant also.

Subd. 3. Refusal of Defendant to be Examined. If the defendant does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may prohibit the defendant from introducing evidence of ~~his~~ the defendant's mental condition, may strike any such evidence previously introduced, may permit any other party to introduce evidence of defendant's refusal to cooperate and to comment thereon to the trier of the facts, and may make any such other ruling as it deems just.

Subd. 4. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and ~~he~~ the court shall cause copies of the report to be delivered forthwith to the prosecuting attorney, and to defense counsel. The contents of the report shall not otherwise be disclosed except as hereafter provided by this rule. The report of the examination shall contain:

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

(2) If so directed by the court an opinion as to whether, because of mental illness or deficiency, the defendant at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which defendant is charged or that it was wrong;

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

(4) A statement of the factual basis upon which the diagnosis and any opinion are based.

If the examination cannot be conducted by reason of the defendant's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental illness or deficiency.

Subd. 5. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If ~~his~~ the defendant's mental condition is an issue, any party may call the person who examined the defendant at the direction of the court to testify as a witness at the trial and ~~he~~ that person shall be subject to cross-examination by any other party. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01 or Rule 20.02, or both, the admissibility at trial of any statements made by ~~him~~ the defendant for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(1) Notice by Defendant of Sole Defense of Mental Condition. If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of ~~his~~ an intention 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 mental deficiency pursuant to Rule 14.01(c), statements made by the defendant for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(2) ~~Separate Trial of Defenses~~ Defendant's Election. If a defendant notifies the prosecuting attorney under Rule 9.02, Subd. 1(3)(a) of ~~his~~ an intention to rely on the defense of mental illness or mental 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 mental deficiency, the

defendant shall elect:

(a) Whether there shall be a separation of the two defenses with a sequential order of proof before the court or jury in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the defendant's mental illness or deficiency; or

(b) Whether the two defenses shall be tried and submitted together to the court or jury.

In felony and gross misdemeanor cases, the defendant's election shall be made at the Omnibus Hearing under Rule 11. In misdemeanor cases, the defendant's election shall be made at the pretrial conference under Rule 12 if held and otherwise shall be made immediately prior to trial.

(3) Effect of ~~Separate Trial~~ Election. If the defendant ~~relies on~~ elects to separate the two defenses, the statements made by ~~him~~ the defendant for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against ~~him~~ the defendant only at that stage of the trial relating to the defense of mental illness or mental deficiency. If the defendant elects to have the two defenses tried and submitted together, such statements and evidence shall be admissible against the defendant on all issues.

(4) Notice by Prosecuting Attorney. The defendant shall not be required to make the election provided for by this rule and there shall be no separation of defenses for trial if the prosecuting attorney gives written notice to defense counsel that any statements made by the defendant for the purpose of the mental examination and evidence obtained as a result of the statements will not be offered in evidence against the defendant at trial.

(5) Procedure Upon Separated Trial of Defenses.

(a) Instructions to Jury. When the two defenses are separated for trial pursuant to the defendant's election under this rule, the jury shall be informed at the commencement of the trial that the two defenses have been interposed; that the defense of not guilty will be tried first and then the defense of mental illness or mental deficiency; that if the jury finds that the elements of the offense charged have not been

proved, the defendant will be acquitted; that if the jury finds the elements of the offense have been proved, the defense of mental illness or deficiency will then be tried and determined by the jury.

(b) Proof of Elements of Offense--Effect. Upon the trial of the defense of not guilty the jury, or the court, if a jury is waived, shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt.

If the court or jury determines that the elements of the offense have not been proved beyond a reasonable doubt, a judgment of acquittal shall be entered.

If the court or jury determines that the elements of the offense have been proved beyond a reasonable doubt, the defense of mental illness or mental deficiency shall then be tried and determined by the jury, or by the court, if a jury is waived, and based upon that determination the jury or court shall render a verdict or make a finding: (1) of not guilty by reason of mental illness; or (2) of not guilty by reason of mental deficiency; or (3) of guilty. The court shall enter judgment accordingly. The defendant shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence."

Subd. 7. Simultaneous Examinations. The court may order that the examination for competency to proceed under Rule 20.01, an examination for civil commitment as mentally ill or mentally deficient under the Minnesota Commitment Act of 1982, Minn. Stat. Ch. 253B, or successor statute, and the examination authorized by Rule 20.02 be conducted simultaneously.

Subd. 8. Legal Effect of Finding 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 shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against ~~him~~ the defendant and that the defendant be detained in a state hospital or other facility pending completion of the proceedings. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by 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 shall order ~~him~~ the defendant remanded to the care and custody of the commissioner, and if not under such commitment, the court shall cause civil commitment proceedings to be instituted against ~~him~~ the defendant. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by Rule 20.02, subd. 8(4).

(3) Appeal. Either party shall have the right to appeal to the Court of Appeals from a determination of the court upon the civil commitment proceedings. The appeal shall be taken on the record only pursuant to Rule 28. In all commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

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

183. Rule 20.03, Subd. 1. Order for Disclosure.

Amend this rule as follows:

"Subd. 1. Order for Disclosure. If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of ~~his~~ an intention to rely on the defense of mental illness or mental deficiency, the trial court, on motion of the prosecuting attorney and notice to defense counsel may order the defendant to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental condition of the defendant and relevant to the issue of the defense of ~~his~~ mental illness or mental deficiency. If the copies of the reports and records are furnished to the court, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the defendant.

If the defendant is unable to comply with the court order, a subpoena duces tecum may be issued under Rule 22."

184. Comments on Rule 20.

Amend the first sentence of the first paragraph of the comments on Rule 20 as follows:

"Rule 20 prescribes the detailed procedures to be followed when it appears that a defendant may be mentally incompetent to stand trial or when ~~he~~ the defendant interposes a defense of mental irresponsibiilty."

185. Comments on Rule 20.01, Subd. 1.

Amend the fourth paragraph of the comments on Rule 20 as follows:

"Rule 20.01, subd. 1 with some changes of langauge adopts the provisions of Minn. Stat. §611.026(1971) defining competency to proceed and also includes the additional elements as set forth in Unif. R. Crim. P. 463(b) (1987) and ABA Standards for Criminal Justice 7-4.1(b) (1985). The test for competency to proceed set forth in part (1) of the rule is as required by Dusky v. United States, 362 U.S. 402 (1960). The requirement for counsel consulting with the defendant before proceeding under the rule is from Unif. R. Crim. P. 464(c) (1987) and ABA Standards for Criminal Justice 7-4.4(a)(ii) (1985). The standard set forth in the rule for competency to waive counsel is from Unif. R. Crim. P. 711(a) and (d) (1987) and ABA Standards for Criminal Justice 7-5.3(b) (1985). See Rule 5.02 and the Comments to that rule concerning the appointment of counsel generally."

186. Comments on Rule 20.01, Subd. 2.

Amend the fifth paragraph of the comments on Rule 20 as follows:

"If the court before which the case is pending determines there is reason to doubt the defendant's competency and the charge is a felony or gross misdemeanor, the procedures prescribed by Rules 20.01, subd. 2(2) to 20.01, subd. 9 shall be ~~taken in the district court (Rule 20.01, subd. 2(1))~~ followed."

187. Comments on Rule 20.01, Subd. 2.

Amend the comments on Rule 20 by adding the following new paragraph after the existing sixth paragraph:

"Under Rule 20.01, subd. 2, the prosecuting attorney, defense counsel and the court all have a duty to raise the issue of the defendant's competency if a reasonable doubt of that exists. This is in accord with Unif. R. Crim. P. 464 (a) (1987) and ABA Standards for Criminal Justice 7-4.2(a), (b) and (c) (1985). The prohibition in the rule against defense counsel divulging communications in violation of the attorney - client privilege is from Unif. R. Crim. P. 464 (b) (1987) and ABA Standards for Criminal Justice 7-4.2(f) (1985)."

188. Comments on Rule 20.01, subd. 2(3) and (4).

Amend the eighth paragraph of the comments on Rule 20 as follows:

"The first steps in that procedure under Rule 20.01, subds. 2(3) and (4) are the medical examination of the defendant and a determination of ~~his~~ the defendant's competency upon the medical report, or after hearing if objection is made to the report (Rule 20.01, subd. 3). (These rules ~~are~~ were originally derived from ALI Model Penal Code §§ 4.04 -4.06 and Wis. Stat. §971.14). As revised the rules are in substantial compliance with the Uniform Rules of Criminal Procedure (1987) and the American Bar Association Standards for Criminal Justice (1985). The preference in the rule for an outpatient examination if that can be adequately done is derived from Unif. R. Crim. P. 464(f) (1987) and ABA Standards for Criminal Justice 7-4.3 (1985). If the court determines that a defendant who is otherwise entitled to release will not appear for an outpatient examination, that would be sufficient cause to find that an outpatient examination cannot be adequately done and to order the defendant confined for the examination. See Rule 6 as to whether the defendant would otherwise be entitled to release from custody during the proceedings. The provision in Rule 20.01, subd. 2(3) for the mental-health professionals conducting the examination to promptly contact the court and counsel upon concluding the defendant poses any of the serious imminent risks specified is taken from Unif R. Crim. P. 464 (e)(6) (1987) and ABA Standards for Criminal Justice 7-3.2(b) (1985). The requirements for the examination report as set forth in Rule 20.01, subd. 2(4) are in substantial compliance with Unif. R. Crim. P. 464(f) (1987) and ABA Standards for Criminal

Justice 7-4.5 (1985). The examiners appointed by the court to examine a defendant for the purpose of determining competency to proceed or for the purpose of a mental illness or mental deficiency defense must have the same qualifications as examiners appointed for civil commitment proceedings. Under Minn. Stat. §253B.02, subd. 7 (1988) that means the examiner must be "a licensed physician or a licensed consulting psychologist, knowledgeable, trained and practicing in the diagnosis and treatment of the alleged impairment". If simultaneous examinations are ordered pursuant to Rule 28.02, subd. 7, the examiner appointed should then be qualified to provide a report for all the necessary purposes."

189. Comments on Rule 20.01, Subd. 3.

Amend the comments on Rule 20 by adding the following new paragraph after the existing eighth paragraph:

"Rule 20.01, subd. 3 sets forth the procedure to be followed for determining competency based upon the report alone or together with a hearing if objection is made to the report. The provisions for going forward with the evidence as set forth in Rule 20.01, subd. 3(2) are taken from Unif. R. Crim. P. 466(f) (1987) and ABA Standards for Criminal Justice 7-4.8(c)(i) (1985). Rule 20.01, subd. 3(3) providing for either party to cross-examine the person who prepared the report or that person's sources is taken from Unif. R. Crim. P. 466(d) (1987) and ABA Standards for Criminal Justice 7-4.8(a)(i) and 7-4.8(b) (1985). The provisions in Rule 20.01, subd. 3(4) concerning defense counsel as a witness on competency are taken from Unif. R. Crim. P. 464 (e)(1) and (2) (1987) and ABA Standards for Criminal Justice 7-4.8(b)(i) and (ii) (1985). The evidentiary standard set forth in Rule 20.01, subd. 3(6) is taken from Unif. R. Crim. P. 464(g) (1987) and ABA Standards for Criminal Justice 7-4.8(c)(ii) (1985)."

190. Comments on Rule 20.01, Subd. 4(2).

Amend the tenth paragraph of the comments on Rule 20 as follows:

"If ~~he~~ the defendant is found to be incompetent and the charge is a misdemeanor, the case shall be dismissed (Rule 20.01, subd. 4(2))."

191. Comments on Rule 20.01, Subds. 4(2) and 5.

Amend the twelfth and thirteenth paragraphs of the comments on Rule 20

as follows:

"If the defendant is under civil commitment under Minn.Stat. Ch. 253B (1982), the civil commitment shall be continued (Rule 20.01, subd. 4(2)(a) and (b)). If ~~he~~ the defendant is not under civil commitment, commitment proceedings under Minn.Stat. § 253B.07 (1982) in the probate court shall be instituted against ~~him~~ the defendant.

"At any time, on motion of the interested parties or on the court's ~~own motion~~ initiative, a hearing shall be held to determine the defendant's competency, and if ~~he~~ the defendant is found to be competent, the criminal proceedings shall be resumed. (There is no limitation on the time or number of these hearings.) (Rule 20.01, subd. 5)."

192. Comments on Rule 20.01, Subd. 8.

Amend the seventeenth paragraph of the comments on Rule 20

as follows:

"By Rule 20.01, subd. 8 statements made by the defendant to the court-appointed examiner for the purpose of the examination under Rule 20.01, subd. 2(3) and evidence derived therefrom are admissible at the proceedings to determine ~~his~~ the defendant's competency (Rule 20.01, subd. 3). (See ALI Penal Code, § 4.09, Wis.Stat. § 971.18.) (For the admissibility of these statements at trial, see Rule 20.02, subd. 6.)"

193. Comments on Rule 20.02.

Amend the twenty-first and twenty-second paragraph of

the comments on Rule 20 as follows:

"Rule 20.02 is intended, first, to provide a procedure for compulsory mental examination of the defendant without infringing upon the defendant's constitutional privilege against self-incrimination as to statements made by ~~him~~ the defendant for the purpose of the examination, (Rules 20.02, subd. 1 to subd. 7) and, second, to provide procedures following an acquittal by reason of mental illness or mental deficiency that will meet constitutional requirements of equal protection and due process (Rule 20.02, subd. 8). (See Jackson v. Indiana, 406 U.S. 715 (1972), McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972).)

"By Rule 20.02, subd. 1 an order for compulsory mental examination is triggered by a defense notice under Rule 9.02, subd. 1(3)(a) of an intention to rely on the defense of mental illness or mental deficiency, by the defendant in a misdemeanor case pleading not guilty by reason of mental illness or mental deficiency, or when the defendant offers evidence of mental illness or mental deficiency at trial. Under Rule 9.02, subd. 1(3)(a), in felony and gross misdemeanor cases, ~~if he~~ a defendant who also intends to rely on the defense of not guilty of the elements of the offense charged ~~he~~ must at the same time so notify the prosecution. (See Rule 20.02, subd. 6(2) providing for the trial procedure in the event the defendant gives notice of ~~his~~ intention to rely on both the defenses of mental illness or mental deficiency and not guilty.)"

194. Comments on Rule 20.02, Subd. 2.

Amend the twenty-fourth paragraph of the comments on Rule 20 as follows:

"Rule 20.02, subd. 2 providing for the examination is the same as Rule 20.01, subd. 2(3) governing the examination for competency to proceed. See the comments on Rule 20.01, subd. 2(3) as to the qualifications of the examiners appointed to examine the defendant. Under Rule 20.02, subd. 7 the two examinations as well as any examination under the civil commitment statutes in Minn. Stat. Ch. 253B may by court order be conducted simultaneously. In the order for the examination under Rule 20.02, subd. 2, the court shall direct what the examination and report shall cover. (See Rule 20.02, subd. 4(1), (2), (3).)"

195. Comments on Rule 20.02, Subd. 3.

Amend the twenty-fifth paragraph of the comments on Rule 20 as follows:

"Rule 20.02, subd. 3 leaves the imposition of sanctions for failure of the defendant to participate in the examination to the discretion of the trial court to be determined under all of the circumstances. See Rule 20.02, subd. 4 providing that the examiner's report shall if possible contain an opinion as to whether the defendant's failure to participate was the result of ~~his~~ the defendant's mental condition."

196. Comments on Rule 20.02, Subd. 5.

Amend the twenty-seventh paragraph of the comments on Rule 20 as follows:

"Rule 20.02, subd. 5 provides that evidence derived from the examination is inadmissible except when the defendant has raised the issue of his or her mental condition."

197. Comments on Rule 20.02, Subd. 6.

Amend the thirtieth through thirty-fourth paragraphs of the comments on Rule 20 as follows:

"If, however, the defendant intends to rely on the defense of mental illness or mental deficiency and the defense ~~that he is~~ of not guilty of the elements of the offense charged (Rules 9.02, subd. 1(3)(a); 14.01), ~~there must be~~ the defendant must make an election between (1) a separation of the two defenses for trial (Rules 20.02, subd. 6(2); 20.02, subd. ~~6(4)~~ 6(5)). (See also Wis. Stat. §971.175; State ex rel. LaFollette v. Raskin, ~~35~~ 34 Wis.2d 607, 150 N.W.2d 318 (1967), or a trial of the two defenses jointly (Rule 20.02, subd. 6(2)). The defendant is not required to make the election if the prosecuting attorney notifies the defense that the defendant's statements and evidence obtained therefrom will not be offered at trial (Rule 20.02, subd. 6(4). In the event the notice is given, the two defenses will be tried jointly and the defendant's statements and evidence obtained therefrom will be inadmissible. ~~The mandatory separation of the two defenses for trial under this rule makes it unnecessary to use the procedures outlined in State v. Hoffman, 328 N.W.2d 709 (Minn. 1982).~~ This right of the defendant to elect either a bifurcated or a unitary trial is in accord with Unif. R. Crim. P. 474 and ABA Standards for Criminal Justice 7-6.7 (1985).

"If the defendant elects that the two defenses ~~are~~ be separated for trial, the statements and evidence derived therefrom will be admissible only upon the trial of the defense of mental illness or mental deficiency, if otherwise admissible under the rules of evidence. (Rule 20.02, subd. 6(3).)

"If the defendant elects a joint trial the statements and evidence will be admissible against the defendant on all issues, if otherwise admissible under the rules of evidence. (Rule 20.02, subd. 6(3).)

"The trial procedure when ~~there is~~ the defendant elects a separation of the two defenses under Rule 20.02, subd. 6(2) is set forth in Rule 20.02, subd. ~~6(4)~~ 6(5). (See also Wis. Stat. §971.175.) The trial shall be continuous before the same jury or judge, with the defense of not guilty of the elements of the offense tried first, and then if necessary, the defense of not guilty by reason of mental illness or mental deficiency.

"The jury shall be informed before commencement of the trial that the two defenses have been interposed and of the trial procedures that will be ~~following~~ followed in trying them. (Rule 20.02, subd. 6~~(4)~~(5)(a).)

"Upon the trial of the defense of not guilty, the jury or court shall determine whether the elements of the offense have been proved beyond a reasonable doubt (Rule 20.02, subd. 6~~(4)~~(5)(b).)"

198. Comments on Rule 20.02, Subd. 6(5)(b).

Amend the thirty-eighth paragraph of the comments on Rule 20 as follows:

"The provisions of Minn. Stat. §611.026 (1971) placing the burden on the defendant of proving ~~his~~ lack of mental responsibility by a preponderance of the evidence are continued by Rule 20.02, subd. 6~~(4)~~(5)(b)."

199. Comments on Rule 20.03.

Amend the last sentence of the forty-first paragraph of the comments on Rule 20 as follows:

"These rules allow the prosecution to call a defense-retained psychiatrist to testify at the mental illness portion of a bifurcated trial and such a practice does not violate the defendant's attorney-client privilege or ~~his~~ the constitutional right to the effective assistance of counsel. State v. Dodis, 314 N.W.2d 233 (Minn.1982)."

200. Comments on Rule 20.

Amend the forty-second and forty-third paragraphs of the comments on Rule 20 as follows:

"The defendant may turn over the copies of the reports and records to the court instead of to the prosecuting

attorney. If ~~he~~ the defendant does so, the court shall examine them to determine their relevancy. If the court determines they are relevant, they shall be given to the prosecuting attorney. Otherwise they shall be returned to the defendant.

"If the defendant is unable to comply with the order of the court for disclosure, either because ~~he~~ the defendant does not have access to the reports or records, or for any other reason, a subpoena duces tecum may be issued under Rule 22 for their production. (See Rule 22.02)."

201. Rule 21.01. When Taken.

Amend this rule as follows:

"Rule 21.01. When Taken

Whenever there is a reasonable probability that the testimony of a prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1, the court before whom the proceedings are pending may, at any time after the filing of a complaint or indictment or entry of a tab charge upon the records, upon motion and notice to the parties, order that the testimony of such witness be taken by oral deposition before any designated 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. The order shall also direct the defendant to be present at the taking of the deposition."

202. Rule 21.03. Expenses of Defendant and Counsel; Failure to Appear.

Amend this rule as follows:

"Rule 21.03. Expenses of Defendant and Counsel; Failure to Appear

Subd. 1. Expenses, Defendant and Counsel. If a defendant is unable to bear the expenses of travel and subsistence of himself or herself and ~~his attorney~~ defense counsel for attendance at the examination, the court shall direct that such expenses be paid at public expense.

Subd. 2. Failure to Appear. If a defendant who is not confined fails to appear at the examination without reasonable excuse after having received notice thereof, the deposition may be taken and used to the same extent as though ~~he~~ the defendant had been present."

203. Rule 21.04, Subd. 2. Oath and Record of Examination.

Amend this rule as follows:

"Subd. 2. Oath and Record of Examination. The witness shall be put on oath and a verbatim record of ~~his~~ the testimony of the witness shall be made.

The testimony shall be taken stenographically and transcribed unless the court orders otherwise.

In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall 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. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at ~~his~~ that party's own expense."

204. Rule 21.04, Subd. 3. Scope and Manner of Examination - Objections - Motion to Terminate.

Amend part (a) of this rule as follows:

"(a) In no event shall the deposition of a party defendant be taken without ~~his~~ the defendant's consent."

205. Rule 21.05. Transcription, Certification and Filing.

Amend the first paragraph of this rule as follows:

"When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. ~~He~~ Such person shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the clerk thereof for filing."

206. Rule 21.06, Subd. 2. Inconsistent Testimony.

Amend this rule as follows:

"Subd. 2. Inconsistent Testimony. A deposition may be used as substantive evidence, so far as otherwise admissible under the rules of evidence, if the witness gives testimony

at the trial or hearing inconsistent with ~~his~~ the deposition or if ~~he~~ the witness persists at the hearing or trial in refusing to testify despite an order of the court to do so."

207. Rule 22.03. Service.

Amend this rule as follows:

"Rule 22.03. Service

A subpoena may be served by the sheriff, by ~~his~~ a deputy sheriff, or any other person at least 18 years of age who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at ~~his~~ the person's usual place of abode with some person of suitable age and discretion then residing therein. Fees and mileage need not be tendered in advance."

208. Comments on Rule 22.04.

Amend the ninth paragraph of the comments on Rule 20 as follows:

"Under Rule 22.04 a subpoena may be served any place in the state. There are no limitations on the distance to the place in the state where ~~he~~ the witness may be required to attend under a subpoena. (This is different from Minn.R.Civ.P. 45.04(2), 45.05.) (This rule changes Minn.Stat. § 597.11 (1971).)"

209. Rule 23.03, Subd. 3. Fine Payment.

Amend this rule as follows:

"Subd. 3. Fine Payment. A defendant shall be advised in writing before paying a fine to a violations bureau that such a payment constitutes a plea of guilty to the misdemeanor designated and an admission that ~~he~~ the defendant understands that ~~he~~ the defendant has the rights which ~~he~~ the defendant voluntarily waives:

a. to a trial to the court or to a jury;

b. to be represented by counsel;

c. to be presumed innocent until proven guilty beyond a reasonable doubt;

d. to confront and cross-examine all prosecution witnesses ~~against him~~; and

e. to either remain silent or to testify ~~in his own behalf~~ for the defense."

210. Rule 23.04. Designation as a Petty Misdemeanor in a Particular Case.

Amend this rule as follows:

"Rule 23.04. Designation as a Petty Misdemeanor in a Particular Case

If at or before the time of arraignment or trial on an alleged misdemeanor violation, the prosecuting attorney certifies to the court that in ~~his~~ the prosecuting attorney's opinion it is in the interests of justice that the defendant not be incarcerated if convicted, the alleged offense shall be treated as a petty misdemeanor if the defendant consents and the court approves."

211. Rule 23.05, Subd. 2. Right to Appointed Counsel.

Amend this rule as follows:

"Subd. 2. Right to Appointed Counsel. If a defendant is financially unable to afford counsel, the Court shall, unless waived, appoint counsel to represent ~~him if he~~ such a defendant who is charged with a misdemeanor which by operation of Rule 23.04 is to be treated as a petty misdemeanor and which also involves moral turpitude."

212. Comments on Rule 23.03, Subd. 3.

Amend the third sentence of the ninth paragraph of the comments on Rule 23 as follows:

"In such suitable form, the fine schedule should be included to advise the defendant of the fine for the particular offense ~~with which he is~~ charged."

213. Comments on Rule 23.04.

Amend the eleventh paragraph of the comments on Rule 23 as follows:

"Rule 23.04 provides that, with the consent of the defendant and approval of the court, a misdemeanor otherwise punishable by incarceration shall be treated as a petty misdemeanor on the certification of the prosecutor. This

certification should allege that in the prosecutor's opinion it is in the interests of justice, irrespective of the outcome, that the defendant not be incarcerated. If this procedure is followed, the defendant upon conviction may be fined no more than the amount specified in Rule 23.01 as the maximum fine for a petty misdemeanor. The defendant, however, then has no right to the jury trial to which ~~he~~ the defendant would otherwise be entitled under Rule 26.01, subd. 1(1)(a) (see Rule 23.05, subd. 1). Also, under Rule 23.05, subd. 2, the defendant financially unable to afford counsel will not automatically have counsel appointed on request as ~~he~~ would otherwise ~~be entitled to~~ occur under Rule 5.02 unless the certified petty misdemeanor involves moral turpitude. See also Rule 5.02 as to the appointment of counsel upon request of the defendant or interested counsel or upon the court's ~~own motion~~ initiative when the prosecution is for a misdemeanor not punishable by incarceration and moral turpitude is not involved."

214. Comments on Rule 23.

Amend the comments on Rule 23 by adding the following new paragraph after the twelfth paragraph of the comments:

"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 rejects 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)."

215. Rule 24.02, Subd. 11. Series of Offenses Aggregated.

Amend this rule as follows:

"Subd. 11. Series of Offenses Aggregated. When a series of offenses are aggregated pursuant to Minn. Stat. § 609.52, subd. 3~~(5)-(1971)~~ (7) (1988) and the offenses have been committed in more than one county, the case may be presented and tried in any one of the counties in which one or more of the offenses was committed."

216. Rule 24.02, Subd. 12. Non-Support of Wife or Child.

Amend this rule as follows:

"Subd. 12. Non-Support of ~~Wife~~ Spouse or Child.

Violations of Minn.Stat. §609.375 ~~(1971)~~ (1988) for non-support of ~~wife~~ spouse or child may be prosecuted and tried in the county where the ~~wife~~ spouse or child or both reside."

217. Rule 24.03, Subd. 4. Proceedings on Transfer.

Amend the second sentence of this rule as follows:

"If the defendant is in custody, the court may order that ~~he~~ the defendant be transported to the sheriff of the county to which the case is transferred."

218. Comments on Rule 24.02, Subd. 11.

Amend the language of the comments on Rule 24 concerning this rule as follows:

"Rule 24.02, subd. 11 (Series of Offenses Aggregated) from Minn. Stat. § 609.52, subd. 3~~(5)--(1971)~~ (7) (1988), as amended."

219. Comments on Rule 24.02, Subd. 12.

Amend the language of the comments on Rule 24 concerning this rule as follows:

"Rule 24.02, subd. 12 (Non-Support of ~~Wife~~ Spouse or Child) from Minn. Stat. § 609.375 ~~(1971)~~ (1988)."

220. Comments on Rule 24.03, Subd. 1.

Amend the first sentence of the paragraph in the comments on Rule 24 concerning this rule as follows:

"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 ~~own motion~~ initiative upon any of the grounds specified in the rule."

221. Comments on Rule 24.03, Subd. 4.

Amend the fourth sentence of the last paragraph of the comments on Rule 24 as follows:

"If the defendant has been released upon conditions of release, those conditions shall be continued, conditioned upon ~~his~~ appearance for trial in the county to which venue

has been transferred as ordered by the court."

222. Rule 25.01, Subd. 1. Grounds for Exclusion of Public.

Amend this rule as follows:

"Subd. 1. Grounds for Exclusion of Public. All pretrial hearings shall be open to the public. However, ~~the defendant, the prosecuting attorney or the court may move that~~ all or part of such hearing may be closed to the public on motion of the defendant or the prosecuting attorney or on the court's initiative on the ground that dissemination of evidence or argument adduced at the hearing may interfere with an overriding interest including that it may disclose matters that may be inadmissible in evidence at the trial and likely to interfere with a fair trial by an impartial jury. The motion shall not be granted unless the court determines that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing the hearing and the closure shall be no broader than is necessary to protect the overriding interest involved."

223. Rule 25.01, Subd. 2. Notice to Adverse Counsel.

Amend this rule as follows:

"Subd. 2. Notice to Adverse Counsel. If, prior to trial, counsel for either the prosecution or the defense has evidence that ~~he~~ counsel believes may be the subject of an exclusionary order, ~~he~~ counsel has a duty first to advise opposing counsel of that fact and suggest that both counsel meet privately with the presiding judge in closed court and disclose to the court the problem. If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court."

224. Rule 25.02, Subd. 1. At Whose Instance.

Amend this rule as follows:

"Subd. 1. At Whose Instance. A continuance or change of venue may be granted on motion of either the prosecution or the defense or on the court's ~~own motion~~ initiative."

225. Comments on Rule 25.

Amend the comments on Rule 25 by adding the following new paragraph after the existing first paragraph:

"The Rules of Public Access to Records of the Judicial Branch, effective July 1, 1988, 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 shall govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records. As to those restrictions see Rule 25.01 (pretrial hearing closure); Rule 25.03 (restricting access to public records relating to a criminal proceeding); Rule 26.03, subd. 6 (exclusion from proceedings outside the hearing of the jury); and Rule 33.04 (delay in filing of complaint, indictment, application, or affidavit requesting a warrant)."

226. Rule 26.01, Subd. 1(2)(a) Waiver Generally.

Amend this rule as follows:

"(a) Waiver Generally. The defendant, with the approval of the court may waive jury trial provided ~~he~~ the defendant does so personally in writing or orally upon the record in open court, after being advised by the court of ~~his~~ the right to trial by jury and after having had an opportunity to consult with counsel."

227. Rule 26.01, Subd. 1(4) Waiver of Number of Jurors Required by Law.

Amend this rule as follows:

"(4) Waiver of Number of Jurors Required by Law. At any time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of a lesser number than that provided by law. The court shall not approve such a stipulation unless the defendant, after being advised by the court of ~~his~~ the right to trial by a jury consisting of the number of jurors provided by law, personally in writing or orally on the record in open court agrees to trial by such reduced jury."

228. Rule 26.01, Subd. 1(6) Waiver of Unanimous Verdict.

Amend this rule as follows:

"(6) Waiver of Unanimous Verdict. At 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 less than that required by law or these rules. The court shall not approve such a stipulation unless the defendant, after being advised by the court of ~~his~~ the right to a verdict on the

concurrence of the number of jurors specified by law, personally in writing or orally on the record waives ~~his~~ the right to such a verdict."

229. Rule 26.01, Subd. 2. Trial Without a Jury.

Amend this rule by adding the following paragraph at the end of the rule:

"By agreement of the defendant and the prosecuting attorney, a case may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the defendant shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the defendant's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the defense in court. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as on any other trial to the court. If the defendant is found guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal the same as from any trial to the court."

230. Rule 26.02, Subd. 4(1) Purpose - By Whom Made.

Amend the third sentence of this rule as follows:

"The judge shall then put to the prospective juror or jurors any questions which ~~he~~ the judge thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in Rule 26.03, subd. 4."

231. Rule 26.02, Subd. 4(2)(b) Prejudicial Publicity.

Amend this rule as follows:

"(b) Prejudicial Publicity. Whenever there is a significant possibility that individual jurors will be ineligible to serve because of exposure to prejudicial material, the examination of each juror with respect to ~~his~~ the juror's exposure shall take place outside the presence of other chosen and prospective jurors. "

232. Rule 26.02, Subd. 4(3)(b) By Order of Court.

Amend parts 4 and 5 of this rule as follows:

"4. Upon completion of defendant's examination of a prospective juror, the defendant shall be permitted to exercise a challenge for cause or a peremptory challenge as permitted by these rules as to that juror. ~~If the~~ A juror who is excused, ~~he~~ shall be replaced by another member of the panel. The replacement juror shall be examined and challenged after all previously drawn jurors have been examined and challenged.

5. Upon completion of the examination and any challenge of each prospective juror by the defendant, the state may examine such prospective juror and may challenge the juror for cause or peremptorily. ~~If the~~ A juror who is excused, ~~he~~ shall be replaced by another member of the panel who shall be subject to examination and challenge in accordance with this rule."

233. Rule 26.02, Subd. 4(3)(c) By Order of Court.

Amend part 2 of this rule as follows:

"2. The prospective juror so drawn shall be sworn to answer truthfully questions asked ~~him~~ relative to ~~his~~ the prospective juror's qualifications to serve as a juror in the case."

234. Rule 26.02, Subd. 4(3)(c) By Order of Court.

Amend part 6 of this rule as follows:

"6. ~~If a~~ A prospective juror who is not excused after examination by the defendant, ~~he~~ may be examined by the state and may be challenged for cause or peremptorily by the state."

235. Rule 26.02, Subd. 5(1) Grounds.

Amend part 2 of this rule as follows:

"2. A felony conviction unless ~~his~~ the juror's civil rights have been restored."

236. Rule 26.02, Subd. 5(1) Grounds.

Amend part 4 of this rule as follows:

"4. A physical or mental defect which renders ~~him~~ the juror incapable of performing the duties of a juror."

237. Rule 26.02, Subd. 5(1) Grounds.

Amend part 7 of this rule as follows:

"7. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by ~~him~~ the defendant, in a criminal prosecution."

238. Rule 26.02, Subd. 5(2) How and When Exercised.

Amend this rule as follows:

"(2) How and When Exercised. A challenge for cause may be oral and shall state the grounds on which it is based. The challenge shall be made before the juror is sworn to try the case, but the court for good cause shown may permit it to be made after ~~he~~ the juror is sworn but before all the jurors constituting the jury are sworn. If a challenge for cause is made and the court sustains the challenge, the juror shall be excused."

239. Rule 26.02, Subd. 8. Alternate Jurors.

Amend this rule as follows:

"Subd. 8. Alternate Jurors. A trial judge may impanel alternate or additional jurors whenever in ~~his~~ the judge's discretion, ~~he~~ the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. Alternate jurors, in the order in which they are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall be allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform ~~his~~ a juror's duties after the jury has retired to consider its verdict, a mistrial shall be declared unless the parties agree pursuant to Rule 26.01, subd. 1(4) that the jury shall consist of a lesser number than that selected for the trial."

240. Rule 26.03, Subd. 1(2) Continued Presence Not Required.

Amend this rule as follows:

"(2) Continued Presence Not Required. The further progress of a trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to waive ~~his~~ the right to be present whenever:

1. a defendant voluntarily and without justification absents himself or herself after trial has commenced; or

2. a defendant after warning engages in conduct which is such as to justify ~~his~~ being excluded from the courtroom because it tends to interrupt the orderly procedure of the court and the due course of the trial. As an alternative to exclusion, the court may use all such methods of restraint as will ensure the orderly procedure of the court and the due course of the trial."

241. Rule 26.03, Subd. 1(3) Presence Not Required.

Amend part 3 of this rule as follows:

"3. in prosecutions for misdemeanors, the court shall permit arraignment and plea in the defendant's absence if the court is satisfied that the defendant has knowingly and voluntarily waived ~~his~~ the right to be present. The court with the written consent of the defendant, or ~~his~~ the defendant's oral consent in open court, may permit trial, and imposition of sentence in the defendant's absence."

242. Rule 26.03, Subd. 2. Custody and Restraint of Defendant's and Witnesses.

Amend this rule as follows:

"Subd. 2. Custody and Restraint of Defendants and Witnesses.

a. During the trial the defendant shall be seated ~~where he can~~ so as to effectively consult with ~~his~~ defense counsel and ~~can~~ to see and hear the proceedings.

b. An incarcerated defendant or witness shall not appear in court in the distinctive attire of a prisoner.

c. Defendants and witnesses shall not be subjected to physical restraint while in court unless the trial judge has found such restraint reasonably necessary to maintain order or security. ~~If the~~ A

trial judge who orders such restraint, ~~he~~ shall state ~~his~~ the reasons on the record outside the presence of the jury. Whenever physical restraint of a defendant or witness occurs in the presence of jurors trying the case, the judge shall on request of the defendant instruct those jurors that such restraint is not to be considered in assessing the proof and determining guilt."

243. Rule 26.03, Subd. 4. Preliminary Instructions.

Amend the last sentence of this rule as follows:

"Such preliminary instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose other instructions ~~of his own~~ to be given prior to trial."

244. Rule 26.03, Subd. 6(1) Grounds for Exclusion of Public.

Amend this rule as follows:

"(1) Grounds for Exclusion of Public. If the jury is not sequestered, the court on its initiative or on motion of the defendant, or the prosecuting attorney ~~or the court may move~~ may order that the public be excluded from any portion of the trial that takes place outside the presence of the jury on the ground that dissemination of evidence or argument adduced at the hearing may interfere with an overriding interest including that it is likely to interfere with a fair trial by an impartial jury. The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing such portion of the trial and the closure shall be no broader than is necessary to protect the overriding interest involved."

245. Rule 26.03, Subd. 6(2) Notice to Adverse Counsel.

Amend this rule as follows:

"(2) Notice to Adverse Counsel. If, during trial, counsel for either the prosecution or the defense has evidence that ~~he~~ counsel believes may be the subject of an exclusionary order, ~~he~~ counsel has a duty first to advise opposing counsel of that fact and suggest that both counsel meet privately with the presiding judge in closed court and disclose to the court the problem. If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court."

246. Rule 26.03, Subd. 6(3) Meeting in Closed Court and Notice of Hearing.

Amend this rule as follows:

"(3) Meeting in Closed Court and Notice of Hearing. In closed court the court shall review the evidence outlined by counsel that may be the subject of a restrictive order. If the court feels that any of the proffered evidence may properly be the subject for a restrictive order, the court shall immediately docket a notice of hearing on the court's initiative or on a motion for a restrictive order made by either counsel ~~or by the court~~. Such notice shall be docketed at least 24 hours before the hearing and shall be reasonably calculated to afford the public and the news media with an opportunity to be heard on whether the overriding interest claimed justifies closing the hearing to the public and the news media."

247. Rule 26.03, Subd. 9. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial.

Amend this rule as follows:

"Subd. 9. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If it is determined that material disseminated outside the trial proceedings raises serious questions of possible prejudice, the court may on its ~~own motion~~ initiative and shall on motion of either party question each juror, out of the presence of the others, about ~~his~~ the juror's exposure to that material. The examination shall take place in the presence of counsel, and a verbatim record of the examination shall be kept."

248. Rule 26.03, Subd. 11. Order of Jury Trial.

Amend this rule as follows:

"Subd. 11. Order of Jury Trial. The order of a jury trial shall be substantially as follows:

a. The jury shall be selected and sworn.

b. The court may deliver preliminary instructions to the jury.

c. The prosecuting attorney may make an opening

statement to the jury, confining the statement to the facts ~~he~~ the prosecuting attorney expects to prove.

d. The defendant may make an opening statement to the jury, or ~~he~~ may make it immediately before ~~he offers~~ offering evidence in ~~his~~ defense. The statement shall be confined to a statement of the defense and the facts ~~he~~ the defendant expects to prove in support thereof.

e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.

f. The defendant may offer evidence in ~~his~~ defense.

g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon ~~his~~ the party's original case.

h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.

i. The defendant may then make a closing argument to the jury.

j. On the motion of the prosecution, the court may permit the prosecution to reply in rebuttal if the court determines that the defense has made in its closing argument a misstatement of law or fact or a statement that is inflammatory or prejudicial. The rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

k. The court shall charge the jury.

l. The jury shall retire for deliberation and, if possible, render a verdict."

249. Rule 26.03, Subd. 13. Substitution of Judge.

Amend this rule as follows:

"Subd. 13. Substitution of Judge.

(1) Before or During Trial. If by reason of death, sickness or other disability, ~~of~~ the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the

court, upon certification ~~that he has familiarized himself~~ of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

(2) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that ~~he cannot perform~~ those duties cannot be performed because ~~he did not preside~~ of not presiding at the trial, ~~he~~ such judge may ~~in his discretion~~ grant a new trial.

(3) Interest or Bias of Judge. No judge shall preside over a trial or other proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request.

(4) Notice to Remove. The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the party receives notice of which judge is to preside at the trial or hearing, but not later than the commencement of the trial or hearing. No notice to remove shall be effective against a judge who has already presided at the trial, Omnibus Hearing, or other evidentiary hearing of which the party had notice, except upon an affirmative showing of cause on the part of the judge. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

(5) Recusal. A judge without a motion may recuse himself or herself from presiding over a trial or other proceeding.

(6) Assignment of New Judge. Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter."

250. Rule 26.03, Subd. 14(1) Exceptions Abolished.

Amend this rule as follows:

"(1) Exceptions Abolished. Exceptions to rulings or orders of the court or to the actions of a party are abolished. It is sufficient that a party, at the time the ruling or order of court is made or sought or the action of a party taken, makes known to the court the action which ~~he~~ the party desires the court to take or ~~his~~ the party's objections to the action of the court or of a party and ~~his~~ the grounds therefor; and, if a party has no opportunity to object to a ruling or order or action at the time it is made or taken the absence of an objection does not thereafter prejudice ~~him~~ the party."

251. Rule 26.03, Subd. 16. Interpreters.

Amend this rule as follows:

"Subd. 16. Interpreters. The court may appoint an interpreter of its own selection and may fix ~~his~~ reasonable compensation for the interpreter. The compensation shall be paid out of funds provided by law."

252. Rule 26.03, Subd. 17(1) Motions Before Submission to Jury.

Amend this rule as follows:

"(1) Motions Before Submission to Jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. After the evidence on either side is closed, the court on motion of a defendant or on its ~~own motion~~ initiative shall order the entry of a judgment of acquittal of one or more offenses charged in the tab charge, indictment or complaint if the evidence is insufficient to sustain a conviction of such offense or offenses."

253. Rule 26.03, Subd. 18(2) Proposed Instructions.

Amend this rule as follows:

"(2) Proposed Instructions. The court may, and upon request of any party shall, before the arguments to the jury, inform counsel what instructions will be given and all such instructions may be stated to the jury by either party as a part of ~~his~~ the party's argument."

254. Rule 26.03, Subd. 18(3) Objections to Instructions.

Amend the first sentence of this rule as follows:

"No party may assign as error any portion of the charge or omission therefrom unless ~~he~~ the party objects thereto

before the jury retires to consider its verdict."

255. Rule 26.03, Subd. 19(5) Polling the Jury.

Amend this rule as follows:

"(5) Polling the Jury. When a verdict is rendered and before the jury has been discharged, the jury shall be polled at the request of any party or upon the court's ~~own motion~~ initiative. The poll shall be conducted by the court or clerk of court who shall ask each juror individually whether the verdict announced is ~~his~~ the juror's verdict. If the poll does not conform to the verdict, the jury may be directed to retire for further deliberation or may be discharged."

256. Rule 26.03, Subd. 19(6) Impeachment of Verdict.

Amend this rule as follows:

"(6) Impeachment of Verdict. Affidavits of jurors shall not be received in evidence to impeach their verdict. ~~If the~~ A defendant who has reason to believe that the verdict is subject to impeachment, ~~he~~ shall move the court for a summary hearing. If the motion is granted the jurors shall be interrogated under oath and their testimony recorded. The admissibility of evidence at the hearing shall be governed by Rule 606(b) of the Minnesota Rules of Evidence."

257. Rule 26.03, Subd. 19(7) Partial Verdict.

Amend this rule as follows:

"(7) Partial Verdict. The court may accept a partial verdict when the jury has agreed on a verdict ~~of conviction~~ on less than all of the charges submitted, but is unable to agree on the remainder."

258. Rule 26.04, Subd. 4. New Trial on Court's Own Motion.

Amend this rule as follows:

"Subd. 4. New Trial on Court's ~~Own Motion~~ Initiative. The court, within 15 days after verdict or finding of guilty, with the consent of the defendant, may order a new trial upon any of the grounds specified in Rule 26.04, subd. 1(1)."

259. Comments on Rule 26.01, Subd. 1.

Amend the second sentence of the fifth paragraph of the comments on Rule 26 as follows:

"The defendant, however, might not be able to exercise this right to a jury trial until ~~he appeals~~ appeal to district court for a trial de novo."

260. Comments on Rule 26.01, Subd. 1(4).

Amend the thirteenth paragraph of the comments on Rule 26 as follows:

"Rule 26.01, subd. 1(4) (Waiver of Number of Jurors Required by Law) is drawn from F. R. Crim. P. 23 (b) and ABA Standards, Trial by Jury, 1.3 (Approved Draft, 1968). (See also State v. Sackett, 39 Minn. 69, 38 N.W. 773(1888).) The number of jurors required by law for felonies is 12 and for gross misdemeanors and misdemeanors is 6. (Minn. Stat. §593.01 ~~(1986)~~ (1989).) (A jury of 6 would not contravene the United States Constitution. Williams v. Florida, 399 U.S. 78 (1970).) The Minnesota Supreme Court held in State v. Hamm, 423 N.W.2d 379 (Minn. 1988) that the provision in Minn. Stat. §593.01 for 6-member juries in misdemeanor and gross misdemeanor cases violated the state constitution. After that decision Article 1, §6 of the Minnesota Constitution was amended in 1988 to permit the legislature to provide for 6-member juries in non-felony criminal cases. The legislature re-enacted Minn. Stat. §593.01, subd. 1, effective February 9, 1989."

261. Comments on Rule 26.01, Subd. 2.

Amend the sixteenth paragraph of the comments on Rule 26 by adding the following language at the end of that paragraph:

"The provision in the rule for submitting the case to the court for decision on stipulated facts is in accord with ABA Standards for Criminal Justice 21-1.3(c) (1985). The rules do not permit conditional pleas of guilty whereby the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980). However, by agreement of the parties, the issues may be preserved by submitting the case on stipulated facts as authorized by Rule 26.01, subd. 2."

262. Comments on Rule 26.02, Subd. 4(2)(b).

Amend the twenty-third paragraph of the comments on Rule 26 as follows:

"Rule 26.02, subd. 4(2)(b) (Prejudicial Publicity), following ABA Standards, Fair Trial and Free Press, 3.4(a) (Approved Draft, 1968), directs sequestration of the jurors during voir dire when there is a significant possibility that exposure to prejudicial publicity may result in disqualification of individual jurors. The standard (3.4(a)) recommends that the questioning should be conducted for the purpose of determining what the prospective juror has read and heard about the case and how ~~his~~ that exposure has affected ~~his~~ the prospective juror's attitude toward the trial, not to convince ~~him~~ the prospective juror that ~~he~~ it would be ~~derelict in his~~ a dereliction of duty ~~if he could~~ not to cast aside any preconceptions ~~he~~ that might ~~have~~ exist."

263. Comments on Rule 26.02, Subd. 4(3)(a).

Amend the twenty-fifth paragraph of the comments on Rule 26 as follows:

"Rule 26.02, subd. 4(3)(a) (Uniform Rule) is the uniform rule which is 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. §§ 546.09, 546.10 (1971); Rule 27, PT. I, Code of Rules for the District Courts.) After each party has exercised ~~his~~ 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 shall be selected from the remaining prospective jurors in the order in which they were called."

264. Comments on Rule 26.02, Subd. 5(2).

Amend the twenty-ninth paragraph of the comments on Rule 26 as follows:

"Rule 26.02, subd. 5(2) (How and When Challenge for Cause is Exercised) providing that a challenge for cause may be oral, stating the grounds upon which it is based, continues substantially the similar provisions of Minn.Stat. § 631.34 (1971). The requirement that a challenge for cause to an individual juror shall be made before ~~he~~ the juror is sworn but for good cause may be made before all the jurors are sworn adopts substantially the provisions of Minn.Stat.

§ 631.26 (1971). As to when jeopardy attaches, see comment to Rule 25.02."

265. Comments on Rule 26.03, Subd. 1(2).

Amend the last sentence of the thirty-fifth paragraph of the comment on Rule 26 as follows:

"The defendant may move for a new trial on the ground ~~his~~ any absence was involuntary."

266. Comments on Rule 26.03, Subd. 2(b).

Amend the thirty-seventh paragraph of the comments on Rule 26 as follows:

"Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses) is taken from ABA Standards, Trial by Jury, 4.1(a), (b), (c) (Approved Draft, 1968). Refusal of a defendant to put on or wear non-distinctive attire of a prisoner that has been made available shall constitute a waiver of this provision and shall not be grounds for delaying the trial."

267. Comments on Rule 26.03, Subd. 8.

Amend the forty-fourth and forty-fifth paragraphs of the comments on Rule 26 as follows:

"Rule 26.03, subd. 8 (Admonitions to Jurors) adopts the substance of ABA Standards for Criminal Justice 8-3.6(a) (1985) ~~, Fair Trial and Free Press 3.5(a) (Approved Draft, 1968)~~. In any case that appears likely to be of significant public interest, an admonition in substantially the following form, suggested by ABA Standards for Criminal Justice 8-3.6(e) (1985) ~~, 3.5(e), Fair Trial and Free Press (Approved Draft, 1968)~~, may be given before the end of the first day if the jury is not sequestered:

"During the time you serve on this jury, there may appear in the newspapers or on ~~the~~ radio or television reports concerning this case, and you may be tempted to read, listen to, or watch them. Please do not do so. Due process of law requires that the evidence to be considered by you in reaching your verdict meet certain standards; for example, a witness may testify about events ~~he himself has~~ personally seen or heard but not about matters ~~of which he was~~ told to them by others. Also, witnesses must be sworn to tell the truth and must be subject to cross-examination.

News reports about the case are not subject to these standards, and if you read, listen to, or watch these reports, you may be exposed to ~~misleading or inaccurate~~ information which unduly favors one side and to which the other side is unable to respond. In fairness to both sides, therefore, it is essential that you comply with this instruction."

268. Comments on Rule 26.03, Subd. 8.

Amend the first sentence of the forty-sixth paragraph of the comments on Rule 26 as follows:

"If the process of selecting a jury is a lengthy one, such an admonition may also be given to each juror as ~~he is~~ selected."

269. Comments on Rule 26.03, Subd. 13.

Amend the fifty-second paragraph of the comments on Rule 26 as follows:

"Rule 26.03, subd. 13 (Substitution of Judge) supersedes Minn. Stat. §542.16(1988) concerning notice to remove a judge in criminal proceedings. Parts (1) and (2) of the rule are ~~is~~ taken from F.R. Crim. P. 25 (a)(b) and ABA Standards, Trial by Jury 4.3 (Approved Draft, 1968) and ~~takes~~ take the place of Minn. Stat. §484.29(1971). Part (3) of the rule is based on Unif. R. Crim. P. 741(c) (1987). Unlike Minn. R. Civ. P. 63.02, the criminal rule defers to the Code of Judicial Conduct as to the grounds for disqualification and provides expressly that the judge sought to be removed may not hear and determine the issue. See Rule 3C of the Code of Judicial Conduct as to the grounds for disqualification. Part (4) of the rule is based on Minn. R. Civ. P. 63.03 except that the time limit specified for the notice differs from that provided by the civil rule and Minn. Stat. §542.16(1988). The rule follows existing law and permits either the defendant or the prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. State v. Kraska, 294 Minn. 540, 201 N.W.2d 742 (1972). Only one such removal as a matter of right is permitted to a party. Any other removals must be for cause. A request to remove a judge for cause may be made either before or after exercising the right to remove a judge without showing cause. A judge who has previously presided at the trial, the Omnibus Hearing, or other evidentiary hearing in the case, of which a party had notice, may not later be removed from the case by that party without a showing of cause. However, 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. Part (5) of the rule concerning recusal is based on Unif. R. Crim. P. 741(b) (1987). 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 in a criminal case or whenever the judge believes his or her impartiality can reasonably be questioned." ABA Standards for Criminal Justice 6-1.7 (1985). Part (6) of the rule is based in part on Minn. R. Civ. P. 63.03 and 63.04 and Minn. Stat. §542.16(1988)."

270. Comments on Rule 26.03, Subd. 19(7).

Amend the ninth paragraph from the end of the comments on Rule 26 as follows:

"Rule 26.03, subd. 19(7) (Partial Verdict) is taken from Unif. R. Crim. P. 535(e) (1987) and from State v. Olkon, 299 N.W.2d 89 (Minn. 1980) which authorized the court to accept a partial verdict. Under the rule a partial verdict of either guilty or not guilty may be accepted by the court."

271. Comment on Rule 26.04, Subd. 4.

Amend the last paragraph of the comments on Rule 26 as follows:

"Rule 26.04, subd. 4 (New Trial on Court's ~~Own Motion~~ Initiative) permits the court to grant a new trial on its ~~own motion~~ initiative with the consent of the defendant."

272. Rule 27.02. Presentence Investigation in Misdemeanor Cases.

Amend this rule as follows:

"Rule 27.02. Presentence Investigation in Misdemeanor Cases

In misdemeanor cases, the report of the presentence investigation may be oral if so directed by the court. If the presentence report is given orally, the defendant or ~~his attorney~~ defense counsel shall be permitted to hear the report."

273. Rule 27.03, Subd. 1. Hearings.

Amend the first paragraph of this rule as follows:

"Hearings upon the presentence report and upon the sentence to be imposed upon the defendant shall be held as provided by law. Before the sentencing proceeding, in a misdemeanor or gross misdemeanor case, each party shall notify the opposing party and the court of any part of a written presentence report which ~~he~~ the party intends to controvert by the production of evidence. Both the prosecutor and the defendant or ~~his attorney~~ defense counsel shall have an opportunity to controvert any part of an oral presentence report and for such purpose the court may continue the sentencing."

274. Rule 27.03, Subd. 1. Hearings.

Amend the first paragraph of part (c) of this rule as follows:

"(C) The court shall cause a copy of the sentencing worksheet and the nonconfidential portion of the presentence investigation report, if any, to be forwarded to the prosecutor and to the defendant or ~~his attorney~~ defense counsel subject to the limitations of Minn.Stat. § 609.115, subd. 4. If the presentence investigation report contains a confidential information section that portion need not be forwarded to counsel or to defendant but counsel should be advised that such information is available for inspection at some designated place."

275. Rule 27.03, Subd. 3. Statements at Time of Sentencing.

Amend this rule as follows:

"Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court shall give the prosecutor and defense counsel an opportunity to make a statement with respect to any matter relevant to the question of sentence including a recommendation as to sentence. The court shall also address the defendant personally and ask ~~him~~ if ~~he~~ the defendant wishes to make a statement in ~~his~~ the defendant's own behalf and to present any information before sentence. The court shall not accept any communication relative to sentencing that is not on the record without disclosing the contents to the defense and to the prosecution."

276. Rule 27.03, Subd. 4. Imposition of Sentence.

Amend part (E) of this rule as follows:

"(E) If the court elects to stay imposition or execution of sentence, and:

(1) Requires a period of probation in felony cases, the court shall advise the defendant that non-custodial probation time may not be credited against ~~his~~ the sentence in the event that probation is ultimately revoked and sentence executed.

(2) If noncriminal conduct could result in revocation, the trial court should advise the defendant so that ~~he~~ the defendant can be reasonably able to tell what lawful acts are prohibited.

(3) A written copy of the conditions of probation should be given to the defendant at the time of sentencing or soon thereafter.

(4) The defendant should be told that in the event of a disagreement ~~between himself and his~~ with the probation agent as to the terms and conditions of probation, ~~he~~ the defendant can return to the court for clarification if necessary."

277. Rule 27.03, Subd. 5. Notice of Right to Appeal.

Amend this rule as follows:

"Subd. 5. Notice of Right to Appeal. After imposition of sentence or granting of probation the court shall inform the defendant of ~~his~~ the right to appeal the judgment of conviction or sentence or both and the right of a person who is unable to pay the cost of appeal to apply for leave to appeal at state expense by contacting the state public defender."

278. Rule 27.04, Subd. 2(1) Advice to Probationer.

Amend this rule as follows:

"(1) Advice to Probationer. ~~When a~~ A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, ~~he~~ shall be advised of the nature of the ~~charge against him~~ violation charged. ~~He~~ The probationer shall also be given a copy of the written report upon which the warrant or summons was based if ~~he~~ the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

a. That ~~he~~ the probationer is entitled to counsel at all stages of the proceedings, and if ~~he is~~ financially unable to afford counsel, one will be

appointed for ~~him at his~~ the probationer upon request;

b. That unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that ~~he~~ the probationer has violated any conditions of probation and that probation should therefore be revoked;

c. That before the revocation hearing all evidence to be used against the probationer shall be disclosed to ~~him~~ the probationer and ~~he~~ the probationer shall be provided access to all official records pertinent to the proceedings;

d. That at the hearing both the prosecution and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

e. That the probationer has the right of appeal from the determination of the court following the revocation hearing."

279. Rule 27.05. Pretrial Diversion.

Amend Rule 27 by adding the following new rule as Rule 27.05:

"Rule 27.05. Pretrial Release

Subd. 1. Agreements Permitted.

(1) Generally. Subject to the court's approval, the prosecuting attorney, after due consideration of the victim's views, and the defendant may agree that the prosecution will be suspended for a specified period after which it will be dismissed under subdivision 7 of this rule on condition that the defendant not commit a felony, gross misdemeanor, misdemeanor or petty misdemeanor offense during the period. The agreement shall be in writing and signed by the parties. It shall state that the defendant waives the right to a speedy trial. It may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony,

evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the charge.

(2) Additional Conditions. Subject to the court's approval after due consideration of the victim's views and upon a showing of substantial likelihood that a conviction could be obtained and that the benefits to society from rehabilitation outweigh any harm to society from suspending criminal prosecution, the agreement may specify one or more of the following additional conditions to be observed by the defendant during the period:

a. that the defendant not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

b. that the defendant participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;

c. that the defendant make restitution in a specified manner for harm or loss caused by the crime charged; and

d. that the defendant perform specified community service.

(3) Limitations on Agreements. The agreement may not specify a period longer or any condition other than could be imposed upon probation after conviction of the crime charged.

Subd. 2. Filing of Agreement; Release. Promptly after the agreement is made and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the prosecution is suspended for a period specified in the statement. Upon the filing, the defendant shall be released from any custody under Rule 6.

Subd. 3. Modification of Agreement. Subject to subdivisions 1 and 2 of this rule and with the court's approval, the parties by mutual consent may modify the terms of the agreement at any time before its termination.

Subd. 4. Termination of Agreement; Resumption of Prosecution.

(1) Upon Defendant's Notice. The agreement is terminated and the prosecution may resume as if there had been no agreement if the defendant files a notice that the

agreement is terminated.

(2) Upon Order of Court. The court may order the agreement terminated and the prosecution resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds that:

a. the defendant or defense counsel misrepresented material facts affecting the agreement, if the motion is made within six months after the date of the agreement; or

b. the defendant has committed a material violation of the agreement, if the motion is made not later than one month after the expiration of the period of suspension specified in the agreement.

Subd. 5. Emergency Order. The court by warrant may direct any officer authorized by law to bring the defendant forthwith before the court for the hearing of the motion if the court finds from affidavit or testimony that:

(1) there is probable cause to believe the defendant committed a material violation of the agreement; and

(2) there is a substantial likelihood that the defendant otherwise will not attend the hearing.

In any case the court may issue a summons instead of a warrant to secure the appearance of the defendant at the hearing.

Subd. 6. Release Status upon Resumption of Prosecution. If prosecution resumes under subdivision 4 of this rule, the defendant shall return to the release status in effect before the prosecution was suspended unless the court imposes additional or different conditions of release under Rule 6.

Subd. 7. Termination of Agreement; Dismissal. If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the complaint, indictment, or tab charge shall be dismissed by order of the court one month after expiration of the period of suspension specified by the agreement. If such a motion is then pending, the agreement is terminated and the complaint, indictment, or tab charge shall be dismissed by order of the court upon entry of a final order denying the motion. Following a dismissal under this subdivision the defendant may not be further prosecuted for the offense involved.

Subd. 8. Termination and Dismissal upon Showing of Rehabilitation. The court may order the agreement terminated, dismiss the prosecution, and bar further prosecution of the offense involved if, upon motion of a party stating facts supporting the motion and opportunity to be heard, the court finds that the defendant has committed no later offenses as specified in the agreement and appears to be rehabilitated.

Subd. 9. Modification or Termination and Dismissal Upon Defendant's Motion. If, upon motion of the defendant and hearing, the court finds that the prosecuting attorney obtained the defendant's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under Rule 9.01, subd. 1(7), the court may:

(1) order appropriate modification of the terms resulting from the misrepresentation; or

(2) if the court determines that the interests of justice require, order the agreement terminated, dismiss the prosecution, and bar further prosecution for the offense involved."

280. Comments on Rule 27.01.

Amend the first paragraph of the comments on Rule 27 as follows:

"Rule 27.01 (Conditions of Release) is based on F.R.Crim.P. 32, 46(c) and 28 U.S.C. § 3148. Pending sentence the conditions for defendant's release or whether ~~he~~ the defendant should be confined are to be determined under Rules 6.02, subd. 1 and subd. 2, governing pre-trial release, but the defendant has the burden of establishing ~~he~~ the defendant will not flee or pose a danger to any other person or to the community."

281. Comments on Rule 27.02.

Amend the third paragraph of the comments on Rule 27 as follows:

"Rule 27.02 (Presentence Investigation in Misdemeanor Cases.) In misdemeanor cases the presentence investigation report may be oral rather than written and this will often be the case. Where the report is oral, the defendant or ~~his attorney~~ defense counsel must be allowed to hear the report

when given."

282. Comments on Rule 27.03.

Amend the comments on Rule 27 by adding the following new paragraph after the existing fifth paragraph:

> "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 (1988). The authorization and procedure to obtain restitution as set forth in the Minnesota rules and statutes substantially conforms to the "Guidelines Governing Restitution to Victims of Criminal Conduct" approved by the American Bar Association on August 9-10, 1988."

283. Comments on Rule 27.03, Subd. 4(D).

Amend the first sentence of the nineteenth paragraph of the comments on Rule 27 as follows:

> "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 ~~that he will receive~~ of receiving a sentence in conformance with the sentencing guidelines."

284. Comments on Rule 27.03, Subd. 4.

Amend part (a)(ii) of the twenty-second paragraph of the comments on Rule 27 as follows:

> "(ii) the offender is in need of correctional treatment which can most effectively be provided if he the offender is confined; or"

285. Comments on Rule 27.03, Subd. 5.

Amend the second sentence of the twenty-third paragraph of the comments on Rule 27 as follows:

> "Failure to notify the defendant of ~~his~~ the right to appeal does not extend the time for appeal."

286. Comments on Rule 27.04.

Amend the twenty-eighth and twenty-ninth paragraphs of the comments on Rule 27 as follows:

"Rule 27.04 (Probation Revocation) sets forth the procedure to be followed to assure that a defendant is accorded all ~~of his~~ constitutional rights to due process as set forth in Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471 (1972) before ~~his~~ probation is revoked. The rule is based primarily on ABA Standards, Sentencing Alternatives and Procedures, 18-7.5 (Approved Draft, 1979) except that no preliminary hearing to determine probable cause is required. Such a hearing, however, 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). The requirement of Rule 27.04, subd. 2(4) that the final revocation hearing be held within seven days if the defendant is in custody makes a preliminary hearing constitutionally unnecessary. It is, however, necessary under Rule 27.04, subd. 1(2) that the defendant be brought before the court after ~~his~~ arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.

"At that time the court may order the defendant released under Rule 27.04, subd. 2(3) pending the final revocation hearing. At that initial appearance the defendant shall also be given the written report showing probable cause if ~~he has~~ not already ~~received that~~ provided, have counsel appointed if necessary, be advised as to ~~his~~ the rights under the rule, and have a time set for the final revocation hearing."

287. Comments on Rule 27.05.

Amend the comments on Rule 27 by adding the following new paragraph at the end of the existing comments:

"Rule 27.05 (Pretrial Diversion) is based on Unif. R. Crim. P. 442 (1987) and ABA Standards for Criminal Justice 10-6.1 through 10-6.3 (1985) except that court approval is required for all pretrial diversion when charges are pending during the period of diversion. This rule does not preclude the prosecuting attorney 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 prosecuting attorney 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 conditions specified in Rule 27.05, subd. 1(2), including restitution, may be included in the pretrial diversion agreement. 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."

288. Rule 28.01, Subd. 3. Suspension of Rules.

Amend this rule as follows:

"Subd. 3. Suspension of Rules. In the interest of expediting decision, or for other good cause shown, the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its ~~own motion~~ initiative and may order proceedings in accordance with its direction, but the Court of Appeals may not alter the time for filing notice of appeal except as provided by these rules."

289. Rule 28.02, Subd. 2. Appeal as of Right.

Amend this rule as follows:

"Subd. 2. Appeal as of Right.

(1) Final Judgment and Postconviction Appeal. A defendant may appeal as of right from any adverse final judgment ~~adverse to him~~ or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. Ch. 590. A judgment shall be considered 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 or the imposition of sentence is stayed.

(2) Orders. A defendant may not appeal until final judgment adverse to ~~him~~ the defendant has been entered by the trial court except that a defendant may appeal from an order refusing or imposing conditions of release or in felony and gross misdemeanor cases from:

1. an order granting a new trial when the defendant claims that the trial court should have entered a final judgment in ~~his~~ the defendant's favor; or

2. an order, not on ~~his~~ the defendant's motion, finding ~~him~~ the defendant incompetent to stand trial.

(3) Sentences. A defendant may appeal as of right from any sentence imposed or stayed in a felony case. All other sentences may be reviewed only pursuant to Rule 28.02, subd. 3."

290. Rule 28.02, Subd. 4(1) Service and Filing.

Amend the second sentence of this rule as follows:

"A bond shall not be required of a defendant for exercising ~~his~~ the right to appeal."

291. Rule 28.02, Subd. 4(3) Time for Taking an Appeal.

Amend the first sentence of this rule as follows:

"An appeal by a defendant shall be taken within 90 days after final judgment or entry of the order appealed from in felony and gross misdemeanor cases and within 10 days after final judgment or entry of the order appealed from in misdemeanor cases, except that an appeal from an order denying a petition for postconviction relief shall be taken within 60 days after entry of the order."

292. Rule 28.02, Subd. 5. Proceedings in Forma Pauperis.

Amend this rule as follows:

"Subd. 5. Proceedings in Forma Pauperis. Proceedings on appeal or postconviction in forma pauperis shall be as follows:

(1) An indigent defendant ~~wishing the service of an attorney in an appeal or postconviction case~~ wanting to appeal or to obtain postconviction relief shall make application ~~therefore~~ therefor to the office of the Public Defender, addressed as follows:

Minnesota State Public Defender
The Law School, University of Minnesota
Minneapolis, MN 55455

(2) The office of the State Public Defender shall promptly send to such applicant a financial inquiry form, preliminary questionnaire form and such other forms as deemed appropriate.

(3) The applicant shall, if ~~he wishes~~ the

applicant wants to pursue ~~his~~ the application, completely fill out these forms, sign each of these forms, and have his or her signature notarized on each of these forms if indicated.

(4) The applicant shall then return these completed documents to the office of the State Public Defender for further processing.

(5) The State Public Defender's office shall determine if the applicant is financially and otherwise eligible for representation. If the applicant is so eligible then the State Public Defender shall ~~represent him~~ provide representation regarding a judicial review or an evaluation of the merits of a judicial review of ~~his~~ the case in a felony case and may so represent ~~him~~ the applicant in misdemeanor or gross misdemeanor cases. Upon the administrative determination by the State Public Defender's office that the office will represent an applicant for such a review or evaluation, the State Public Defender is automatically appointed for that purpose without order of the court. The State Public Defender's office shall notify the applicant of its decision on representation and advise ~~him~~ the applicant of any problem relative to ~~his~~ the applicant's qualifications to obtain the services of the State Public Defender's office. Any applicant who contests a decision of the State Public Defender's office that the applicant is ineligible for representation may apply to the Minnesota Supreme Court for relief.

(6) All requests for transcripts necessary for judicial review or efforts to have cases reviewed in which the defendant is not represented by an attorney shall be referred by the court receiving the same to the office of the State Public Defender for processing as in paragraphs (2) through (5) above.

(7) All clerks of court shall furnish the office of the State Public Defender copies of any documents in their possession, without the prior payment of the fees therefor and shall bill the office of the State Public Defender for these copies after they have been furnished to the State Public Defender's office.

(8) All fees, other than for furnishing copies of documents, including appeal fees, hearing fees or filing fees, ordinarily charged by the clerks of court shall automatically be waived in cases in which the State Public Defender's office, or other public defender's office, represents the defendant in

question. Such fees shall also be waived by the court upon a sufficient showing by any other attorney that the defendant is unable to pay the fees required.

(9) Unless otherwise specifically provided by Supreme Court order, the State Public Defender's office shall be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of which county in the state is the county in which the defendant was accused.

(10) In appeal cases and postconviction cases, the cost of transcripts and other necessary expenses shall be borne by the State of Minnesota from funds available to the State Public Defender's office, regardless of which county in the state is the county in which the defendant was accused, if approved by the State Public Defender.

~~(11) The cost of transcripts and other necessary expenses in all indigent appeal cases shall likewise be paid from funds available to the State Public Defender's office when the county in which the defendant was accused is within a judicial district which has a District Public Defender, including Ramsey and Hennepin Counties, if approved by the State Public Defender.~~

~~(12) In all indigent appeal cases arising from judicial districts which do not have a District Public Defender system, the costs of transcripts and other necessary expenses shall be borne by the county therein in which the defendant was accused.~~

~~(13)~~ (11) When a defendant is represented on appeal by the State Public Defender's office, the provision of Rule 110.02., subd. 2 of the Minnesota Rules of Civil Appellate Procedure concerning the certificate as to transcript shall not apply. Rather, in such cases, the State Public Defender upon ordering the transcript shall mail a copy of the written request for transcript to the clerk of the trial court, the clerk of the appellate courts, and the prosecuting attorney. The reporter shall promptly acknowledge receipt of said order and ~~his~~ acceptance of it, in writing, with copies to the clerk of the trial court, the clerk of the appellate courts, the State Public Defender, and the prosecuting attorney and in so doing shall state the estimated number of pages of the transcript and the estimated completion date not to exceed 60 days. Upon delivery of the transcript, the reporter shall file with the clerk of the appellate

courts a certificate evidencing the date of delivery.

(12) A defendant may proceed pro se on appeal only after the State Public Defender has first had the opportunity to file a brief on behalf of the defendant. The State Public Defender at the time of filing and serving the brief shall 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 supplementary brief, the defendant shall so notify the State Public Defender.

(13) Upon receiving notice pursuant to paragraph (12) that the defendant has chosen to proceed pro se on appeal or to file a supplementary brief, the State Public Defender's office shall confer with the defendant about the reasons for choosing to do so and advise the defendant concerning the consequences and ramifications of that choice.

(14) In order to proceed pro se on appeal following consultation, the defendant shall sign and return to the State Public Defender's office a detailed waiver of counsel as provided by that office for the particular case.

(15) If the State Public Defender's office believes, after consultation, that the defendant may not be competent to waive counsel it shall assist the defendant in seeking an order from the district court determining the competency or incompetency of the defendant.

(16) The brief filed by the State Public Defender on behalf of the defendant shall be considered by the court. A defendant, whether or not choosing to proceed pro se, may also file with the court a supplemental brief. The supplemental brief shall be filed within 30 days after the initial brief is filed by the State Public Defender.

(17) If a defendant requests a copy of the transcript, the State Public Defender's office shall confer with the defendant concerning the need for the transcript. If the defendant still requests a copy of the transcript it shall be provided to the defendant temporarily.

(18) Upon receiving the transcript, the defendant must sign a receipt for it including an agreement not to make the transcript available to other persons and to return the transcript to the State Public Defender's

office upon expiration of the time to file any supplementary brief.

(19) The transcript remains the property of the State Public Defender's office and must be returned to that office upon expiration of the time to file any supplemental brief. Upon return of the transcript to the State Public Defender's office, that office shall provide the defendant with a copy of a signed receipt for it. The original of the receipt shall be filed promptly with the clerk of the appellate courts and until it is filed the defendant's supplemental brief will not be accepted for filing."

293. Rule 28.02, Subd. 7(1) Conditions of Release.

Amend the last sentence of this rule as follows:

"The court shall also take into consideration that the defendant may be compelled to serve the sentence imposed ~~upon him~~ before the appellate court has an opportunity to decide the case."

294. Rule 28.02, Subd. 8. Record on Appeal.

Amend the last sentence of this rule as follows:

"~~If~~ 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 a statement of the case or transcript, ~~he~~ shall serve notice of ~~his~~ intent to do so on respondent and the clerk of the trial court and file the notice with the clerk of the appellate courts all within the time provided for ordering a transcript."

295. Rule 28.02, Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record.

Amend this rule as follows:

"Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. The Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the transcript shall be ordered within 30 days after filing of the notice of appeal and may be extended by the appellate court for good cause shown. Any videotape or audiotape exhibits admitted at trial or hearing shall, if not previously transcribed, be transcribed at the request of either the appellant or the respondent. The transcript of

any such exhibit then shall be included as part of the record. If the entire transcript is not to be included, the appellant, within the 30 days, shall file with the clerk of the appellate courts and serve on the clerk of the trial court and respondent a description of the parts of the transcript which ~~he~~ the appellant intends to include in the record and a statement of the issues ~~he~~ the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, ~~he~~ the respondent shall order, within 10 days of service of the description or notification of no transcript, those other parts from the reporter deemed necessary, or serve and file a motion in the trial court for an order requiring the appellant to do so."

296. Rule 28.02, Subd. 10. Briefs.

Amend this rule as follows:

"Subd. 10. Briefs. The appellant shall serve and file ~~his~~ the appellant's brief and appendix within 60 days after delivery of the transcript by the reporter or after the filing of the trial court's approval of the statement pursuant to subd. 8 of this rule or Rule 110.03 of the Minnesota Rules of Civil Appellate Procedure. In all other cases, if the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file ~~his~~ the appellant's brief and appendix with the clerk of the appellate courts within 60 days after the filing of the notice of appeal. The respondent shall serve and file ~~his~~ the respondent's brief and appendix, if any, within 45 days after service of the brief of appellant. 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 to the extent applicable shall govern the form and filing of briefs and appendices except that the appellant's brief shall contain a statement of the procedural history."

297. Rule 28.02, Subd. 13(1) Allowance of Oral Argument.

Amend this rule as follows:

"(1) Allowance of Oral Argument. There shall be oral argument in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it at the time of serving and filing ~~his~~ the party's initial brief, unless:

1. oral argument is forfeited by respondent pursuant to Rule 128.02 of the Minnesota Rules of Civil

Appellate Procedure for failure to timely file a brief and appellant has either waived oral argument or not requested it;

2. oral argument is waived pursuant to Rule 134.06; or

3. the appellate court determines in the exercise of its discretion 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 shall notify the parties when it has been determined that oral argument shall 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 shall be allowed. If, under this provision, oral argument is not allowed, the case shall be considered as submitted to the court at the time 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."

298. Rule 28.03. Certification of Proceedings.

Amend the first sentence of this rule as follows:

"If, upon the trial of any person convicted in any court, or if, upon any motion to dismiss a tab charge, complaint or indictments, or upon any motion relating to the tab charge, complaint, or indictment, any question of law shall arise which in the opinion of the judge is so important or doubtful as to require a decision of the Court of Appeals, ~~he~~ the judge shall, if the defendant shall request or consent thereto, report the case, so far as may be necessary to present the question of law, and certify the report to the Court of Appeals, whereupon all proceedings in the case shall be stayed until the decision of the Court of Appeals."

299. Rule 28.04. Appeal by Prosecuting Attorney.

Amend this rule as follows:

"Rule 28.04. Appeal by Prosecuting Attorney

Subd. 1. Right of Appeal. The prosecuting attorney may appeal as of right to the Court of Appeals:

(1) in any case, from any pretrial order of the trial court except an order dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or an order dismissing a complaint pursuant to Minn. Stat. §631.21; and

(2) in felony cases from any sentence imposed or stayed by the trial court, and

(3) in any case, from an order granting postconviction relief under Minn. Stat. Ch. 590.

Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecuting attorney shall be as follows:

(1) Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of proceedings of five (5) days to allow time to perfect the appeal.

(2) Notice of Appeal. Within five (5) days after entry of the order appealed from, the prosecuting attorney shall file with the clerk of the appellate courts a notice of appeal and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary. Both the notice of appeal and request for transcript shall have attached at the time of filing, proof of service on the defendant or ~~his attorney~~ defense counsel, the State Public Defender, the attorney general for the State of Minnesota, and the clerk of the trial court in which the pretrial order is entered. Failure 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 prosecuting attorney's appeal, but it is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal shall be as set forth in Rule 28.02, subd. 4(2).

(3) Briefs. Within fifteen (15) days of delivery

of the transcripts, appellant shall file ~~his~~ the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent. Within 8 days of service of appellant's brief upon ~~him~~ respondent the respondent shall file ~~his~~ the respondent's brief with said clerk together with proof of service upon the appellant. In all other respects the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the form and filing of briefs and appendices except that the appellant's brief shall contain a statement of the procedural history.

(4) Dismissal by Attorney General. In appeals by the prosecuting attorney, the attorney general may, ~~in his discretion,~~ within 20 days after entry of the order staying proceedings, dismiss the appeal and shall within 3 days thereafter give notice thereof to the judge of the lower court and file with the clerk of the appellate courts notice of such dismissal. The lower court shall then proceed as if no appeal had been taken.

(5) Oral Argument and Consideration. The provisions of Rule 28.02, subd. 13 concerning oral argument shall apply to appeals by the prosecuting attorney provided that the date of oral argument or submission of the case to the court without oral argument shall not be more than 3 months after all briefs have been filed. The Court of Appeals shall not hear or accept as submitted any such appeals more than 3 months after all briefs have been filed and in such cases the lower court shall then proceed as if no appeal had been taken.

(6) Attorney's Fees. Reasonable attorney's fees and costs incurred shall be allowed to the defendant on such appeal which shall be paid by the governmental unit responsible for the prosecution involved.

(7) Joinder. The prosecuting attorney may appeal from one or several of the orders under this rule joined in a single appeal.

(8) Time for Appeal. The prosecuting attorney 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 all issues raised therein have been determined by the trial court. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing

orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached.

An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

Subd. 3. Cross-Appeal by Defendant. Upon appeal by the prosecuting attorney, the defendant may obtain review of any pretrial or postconviction order which will adversely affect ~~him~~ the defendant, by filing a notice of cross-appeal with the clerk of the appellate courts, together with proof of service on the prosecuting attorney, within 10 days after service of notice of the appeal by the prosecuting attorney ~~under Rule 28.04, subd. 2(2)~~, provided that 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 is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the cross-appeal.

Subd. 4. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for defendant's release pending the appeal shall be governed by Rule 6.02, subd. 1 and subd. 2. The court shall 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 wishing the services of an attorney in an appeal taken by the prosecuting attorney under this rule shall proceed under Rule 28.02, subd. 5.

Subd. 6. Procedure Upon Appeal of Postconviction Order.

(1) Service and Filing. An appeal shall be taken by filing a notice of appeal with the clerk of the appellate courts together with proof of service on the opposing counsel, the clerk of the trial court in which the order appealed from is entered, and, when the appellant is not the attorney general, also the attorney general for the State of Minnesota. No fees or bond for costs shall be required for the appeal. Unless otherwise ordered by the appellate court, a certified copy of the order appealed from or a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure need not be

filed. Failure of the prosecuting attorney to take any other step than timely filing the notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal by the prosecuting attorney of an order granting postconviction relief shall be taken within 60 days after entry of the order.

(3) Other Procedures. The provisions of Rule 28.02, subd. 4(2), concerning the contents of the notice of appeal, Rule 28.02, subd. 8, concerning the record on appeal, Rule 28.02, subd. 9, concerning transcript of the proceedings and transmission of the transcript on record, Rule 28.02, subd. 10, concerning briefs, Rule 28.02, subd. 13, concerning oral argument, Rule 28.04, subd. 2(4), concerning dismissal by the attorney general, and Rule 28.04, subd. 2(6), concerning attorney's fees, shall apply to appeals by the prosecuting attorney of an order granting postconviction relief."

300. Rule 28.05, Subd. 1(3) Respondent's Brief.

Amend this rule as follows:

"(3) Respondent's Brief. Within 10 days of service upon respondent of the copy of the notice of appeal and appellant's brief, a respondent~~, if he wishes~~ choosing to respond~~,~~ shall serve ~~his~~ an informal letter brief upon appellant and file with the clerk of the appellate courts 9 copies of ~~his~~ such brief."

301. Comments on Rule 28.02, Subd. 2(1).

Amend the comments on Rule 28 by adding the following new paragraph after the existing third paragraph of the comments:

"Under Rule 28.02, subd. 2(1) a defendant may appeal to the Court of Appeals from either a final judgment or an order denying postconviction relief except for cases in which the defendant has been convicted of murder in the first degree. The procedure for the appeal is governed by Rule 28 which supersedes the holding in Bolstad v. State, 439 N.W.2d 50 (Minn. App. 1989) that the procedure in postconviction appeals is governed by the Rules of Civil Appellate Procedure. See Rules 28.04, subd. 1 and 28.04, subd. 6 as to appeal by the prosecuting attorney in postconviction cases. These rules supersede Minn. Stat. §590.06 (1988) concerning the procedure for an appeal from a postconviction order."

302. Comments on Rule 28.02, Subd. 5.

Amend the comments on Rule 28 by adding the following new paragraph after the existing eighth paragraph of the comments:

"Rule 28.02, subd. 5 also sets forth the method for temporarily making transcripts available to defendants seeking to proceed pro se or to file a supplemental brief on appeal. As to the right of a defendant to proceed pro se on appeal and to obtain a transcript for that purpose see State v. Seifert, 423 N.W.2d 368 (Minn. 1988). The procedure established by the rule contains elements of both the majority and dissenting opinions in that case. The rule allows a defendant to proceed pro se on appeal and to obtain a copy of any necessary transcript, but only after the State Public Defender has first had an opportunity to file a brief on behalf of the defendant and provided a copy of that brief to the defendant. This procedure satisfies the right of a defendant to proceed pro se while also assuring that any valid legal arguments will be brought to the attention of the appellate court by competent legal counsel. The State Public Defender's office will confer with the defendant and advise the defendant of the dangers and consequences of proceeding without legal counsel. If the defendant chooses to proceed, the State Public Defender's office will obtain a waiver of counsel from the defendant. If there is doubt as to the defendant's competency to waive counsel, the State Public Defender's office will assist in seeking an order from the district court determining the defendant's competency or incompetency. Upon receiving the transcript, the defendant must sign a receipt acknowledging the obligation to return the transcript to the State Public Defender's office when the time to file the supplementary brief expires. The transcript remains the property of the State Public Defender's office and any supplementary brief will not be accepted by the appellate court until the State Public Defender files a receipt with the appellate court indicating that the transcript has been returned. The recommended forms appended to the rules contain forms for waiver of counsel, request for determination of competency, and receipts of transcript by and from the defendant that satisfy the requirements of these rules. Under part (10) of Rule 28.02, subd. 5, the State Public Defender is not obligated to pay for transcripts or other expenses for a misdemeanor appeal if that office has not agreed under part (5) of that rule to represent the defendant in such a case."

303. Comments on Rule 28.02, Subd. 13(1).

Amend the second sentence of the fourteenth paragraph of

the comments on Rule 28 as follows:

"Rather, Rule 28.02, subd. 13(1) (Right to Oral Argument) requires a party desiring oral argument to serve and file with ~~his~~ the initial brief a written request for the argument."

304. Comments on Rule 28.04, Subd. 2.

Amend the nineteenth paragraph of the comments on Rule 28 as follows:

"Generally, absent special circumstances, failure of the prosecuting attorney to file ~~his~~ 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); State v. Olson, 294 N.W.2d 320 (Minn.1980); State v. Weber, 313 N.W.2d 387 (Minn.1981). Although the prosecutor need no longer submit with ~~his~~ the notice of appeal the statement formerly required by Minn.Stat. § 632.12, ~~he~~ the prosecutor is required by the court's decisions in State v. Webber, 262 N.W.2d 157 (Minn.1977), State v. Helenbolt, 280 N.W.2d 631 (Minn.1979), and State v. Fisher, 304 N.W.2d 33 (Minn.1981) to show on appeal that the trial court clearly and unequivocally erred and that, unless reversed, the error will have a critical impact on the outcome of the trial."

305. Comments on Rule 28.04.

Amend the comments on Rule 28 by adding the following new paragraph after the existing nineteenth paragraph of the comments:

"Rule 28.04, subd. 6, which establishes the procedure for an appeal by the prosecuting attorney from an adverse order in a postconviction case, supersedes the holding in Bolstad v. State, 439 N.W.2d 50 (Minn. App. 1989) that the procedure in such cases is governed by the Rules of Civil Appellate Procedure. The 60 day time limit for taking such an appeal is the same as was provided by Minn. Stat. §590.06 which is now superseded by these rules."

306. Comments on Rule 28.05, Subd. 1.

Amend the first sentence of the twenty-first paragraph of the comments on Rule 28 as follows:

"Under Rule 28.05, subd. 1(1) a defendant may combine an appeal of ~~his~~ the sentence with an appeal of the judgment of conviction."

307. Rule 29.02, Subd. 1. Appeals in First Degree Murder Cases.

Amend this rule as follows:

"Subd. 1. Appeals in First Degree Murder Cases. A defendant may appeal as of right from the ~~trial~~ district court to the Supreme Court ~~only~~ from a final judgment of conviction of murder in the first degree. Either the defendant or the prosecuting attorney may appeal as of right from the district court to the Supreme Court, in a first degree murder case, from an adverse final order upon a petition for postconviction relief under Minn. Stat. Ch. 590. Upon ~~such an~~ the appeal ~~the defendant may include~~ other charges which were joined for prosecution with the first degree murder charge may be included. Except as otherwise provided in Rule 118 of the Rules of Civil Appellate Procedure for accelerated review by the Supreme Court of cases pending in the Court of Appeals, there shall be no other direct appeals from the district court to the Supreme Court."

308. Rule 29.03. Procedure for Appeals in First Degree Murder Cases.

Amend this rule as follows:

"Rule 29.03. Procedure for Appeals by Defendant in First Degree Murder Cases

Subd. 1. Service and Filing. An appeal shall be taken by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts together with proof of service on the prosecuting attorney, the attorney general for the State of Minnesota, and the clerk of the trial court in which the judgment appealed from is entered. A bond shall not be required of a defendant for exercising ~~his~~ the right to appeal. Unless otherwise ordered by the Supreme Court, defendant need not file a certified copy of the judgment appealed from or a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure. Failure of the defendant to take any other step than timely filing ~~his~~ the notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems necessary, including dismissal of the appeal.

Subd. 2. Contents of Notice of Appeal. The notice of

appeal shall specify the defendant taking the appeal; shall give the names, addresses, and telephone numbers of all counsel and indicate whom they represent; shall designate the judgment or postconviction order from which appeal is taken; and shall state that the appeal is to the Supreme Court.

Subd. 3. Time for Taking an Appeal. An appeal by a defendant from a final judgment of conviction of murder in the first degree shall be taken within 90 days after the final judgment. A judgment shall be considered 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. A notice of appeal filed after the announcement of a decision, or order, but before sentencing or entry of judgment shall be treated as filed after such sentencing or entry and on the day thereof. If a timely motion to vacate the judgment, for judgment of acquittal, or for a new trial has been made, the time for an appeal from a final judgment does not begin to run until the entry of an order denying the motion, and the order denying the motion may be reviewed upon appeal from the judgment.

An appeal by a defendant from an adverse final order in a postconviction proceeding in a first degree murder case shall be taken within 60 days after entry of that order.

A judgment or order is entered within the meaning of these appellate rules when it is entered upon the record of the clerk of the trial court.

For good cause the trial court or a justice of the Supreme Court 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 for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for appeal.

Subd. 4. Other Procedures. The provisions of Rule 28.02, subd. 5, concerning proceedings in forma pauperis, Rule 28.02, subd. 6, concerning stays, Rule 28.02, subd. 7, concerning release of defendant, Rule 28.02, subd. 9, concerning the transcript of proceedings and transmission of the transcript and record, Rule 28.02, subd. 10, concerning briefs, Rule 28.02, subd. 11, concerning the scope of review, and Rule 28.02, subd. 12, concerning action on appeal, and Rule 29.04, subd. 9, concerning oral argument shall apply to appeals in first degree murder cases under this rule."

309. Rule 29.04, Subd. 2. Time for Petitioning.

Amend this rule as follows:

"Subd. 2. Time for Petitioning. ~~In cases originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, a party petitioning for review to the Supreme Court from the Court of Appeals shall serve and file the petition for review within 20 days after the filing of the Court of Appeals' decision. For all other cases,~~ a A party petitioning for review to the Supreme Court from the Court of Appeals shall serve and file the petition for review within 30 days after the filing of the Court of Appeals' decision.

~~In all cases except those originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, a justice~~ A judge of the Court of Appeals or a justice of the Supreme Court may for good cause, before or after the time to serve and file a petition for review has expired, with or without motion ~~and~~ or notice, extend the time for serving and filing such a petition for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for that purpose."

310. Rule 29.04, Subd. 6. Cross-Petition by Respondent.

Amend the last paragraph of this rule as follows:

"The court may permit a respondent, without filing a cross-appeal, to defend a decision ~~of~~ or judgment on any ground that the law and record permit that would not expand the relief ~~he~~ that has been granted to the respondent."

311. Rule 29.04, Subd. 8. Briefs.

Amend this rule as follows:

"Subd. 8. Briefs. Except as otherwise provided in subd. 10 of this rule, appellant shall serve and file ~~his~~ the appellant's brief and appendix within 30 days after entry of the order granting permission to appeal and respondent shall serve and file ~~his~~ the respondent's brief and appendix, if any, within 30 days after service of the brief of appellant. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. The Rules of Civil Appellate Procedure to the extent applicable shall otherwise govern the form and filing of briefs except that appellant's brief shall also include a statement of the procedural history."

312. Rule 29.04, Subd. 9. Oral Argument.

Amend the first sentence of this rule as follows:

"Each party shall serve and file with ~~his~~ the party's initial brief a notice stating whether oral argument is requested."

313. Rule 29.04, Subd. 10(1). Briefs.

Amend this rule as follows:

"(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, the appellant shall within fifteen (15) days from the date of entry of the order granting permission to appeal serve ~~his~~ the appellant's brief upon opposing counsel and file with the clerk of the appellate courts 14 copies thereof. Within eight (8) days of such service on respondent, respondent shall serve ~~his~~ the respondent's brief upon appellant and file 14 copies thereof with said clerk."

314. Rule 29.05. Procedure for Appeals by the Prosecuting Attorney in Postconviction Cases.

Amend Rule 29 by adding the following new Rule 29.05 at the end of existing Rule 29:

"Rule 29.05. Procedure for Appeals by the Prosecuting Attorney in Postconviction Cases

Upon an appeal to the Supreme Court by the prosecuting attorney from an adverse final order of the district court in postconviction proceedings in a first degree murder case, the provisions of Rule 28.04, subd. 6 shall apply."

315. Comments on Rule 29.02, Subd. 1.

Amend the third paragraph of the comments on Rule 29 as follows:

"Under Rule 29.02, subd. 1 (Appeals in First Degree Murder Cases), Minn. Stat. §590.06 (1988), and Minn. Stat. §632.14 ~~(1982)~~ (1988) direct appeals from the ~~trial~~ district court to the Supreme Court in criminal cases are permitted only from either a final judgment of conviction of murder in the first degree or an adverse final order in a postconviction proceeding in such a case. Only the defendant may appeal from a final judgment of conviction, but either party may appeal from an adverse final order in a

postconviction proceeding. Other charges which were joined for prosecution with the first degree murder charge may be included on the appeal. Rule 29.02, subd. 1 permits an appeal only from final judgment as defined in Rule 29.02, subd. 3. Therefore, appeals of any matters in a first degree murder prosecution arising before final judgment, such as an appeal by the prosecuting attorney of a pretrial order, should go to the Court of Appeals under Rule 28 initially."

316. Comments on Rule 29.04, Subd. 2.

Amend the eighth paragraph of the comments on Rule 29 as follows:

"Rule 29.04, subd. 2 (Time for Petitioning) provides ~~shorter time limits~~ the time limit for petitioning the Supreme Court for review ~~when the appeal concerns a pretrial order originally appealed to the Court of Appeals by the prosecuting attorney~~ of a decision by the Court of Appeals. In such cases either the defendant or the prosecuting attorney can petition for review to the Supreme Court from an adverse decision in the Court of Appeals. This includes appeals in postconviction cases that were originally appealed to the Court of Appeals. ~~If the Supreme Court agrees to permit such an appeal, Rule 29.04, subd. 10 provides additional provisions to expedite the appeal. For all other cases, the time limits for petitioning and responding are the same as those specified for civil cases under Minn. R. Civ. App. P. 117.~~"

317. Comments on Rule 30.01.

Amend the last sentence of the first paragraph of the comments on Rule 30 as follows:

"According to State v. Aubol, 309 Minn. 323, 244 N.W.2d 636 (1976), leave to dismiss 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 ~~his~~ prosecutorial discretion."

318. Rule 33.02. Service; How Made.

Amend this rule as follows:

"Rule 33.02. Service; How Made

Whenever under these rules or by an order of court

service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party ~~himself~~ personally is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions or as ordered by the court or as required by these rules."

319. Rule 33.04. Filing.

Amend part (d) of this rule as follows:

"(d) An order shall be issued granting the request in whole or in part, if the judge find from affidavits, sworn testimony or evidence that there are reasonable grounds to believe that: (1) in the case of complaint, indictment, or arrest documents, such filing may lead to any person to be arrested fleeing or ~~secreting himself~~ hiding or otherwise preventing the execution of the warrant or (2) in the case of a search warrant application or affidavit, such filing may cause this search or a related search to be unsuccessful or could create a substantial risk of injuring an innocent person or severely hampering an ongoing investigation."

320. Rule 33.05. Facsimile Transmission.

Amend Rule 33 by adding the following new rule as Rule 33.05 at the end of the existing rule:

"Rule 33.05. Facsimile Transmission

Facsimile transmission may be used for the sending of all complaints, orders, summons, warrants, and other documents including orders and warrants authorizing the interception of communications pursuant to Minn. Stat. Ch. 626A, and arrest and search warrants. All procedural and statutory requirements for the issuance of a warrant or order, including the making of a record of the proceedings, shall be met. For all procedural and statutory purposes, a facsimile order or warrant issued by the court shall have the same force and effect as the original. The original order or warrant, along with any other documents, including affidavits, shall be delivered to the court administrator of the county in which the request or application therefor was made."

321. Comments on Rule 33.04.

Amend the fourth paragraph of the comments on Rule 33 as follows;

"Rule 33.04 (Filing) adopts F. R. Crim .P. 49(d) and Minn. R. Civ. P. 5.04 and 5.05."

322. Comments on Rule 33.05.

Amend the comments on Rule 33 by adding the following new paragraph at the end of the existing comments:

"Rule 33.05 (Facsimile Transmission) is taken from Supreme Court Order #C4-87-1853, issued September 21, 1987, amended October 3, 1988. The rule supersedes Minn. Stat. §§626.11 and 626A.06, subd. 7 to the extent inconsistent."

323. Rule 34.04. Additional Time After Service by Mail.

Amend this rule as follows:

"Rule 34.04. Additional Time After Service by Mail

Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon ~~him~~ the party and the notice or other paper is served upon ~~him~~ the party by mail, three days shall be added to the prescribed period."

INTRODUCTORY STATEMENT

The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a complete manual of forms.

CRIMINAL FORMS

FORM 1

COMPLAINT -- SUMMONS FOR MISDEMEANOR
OR PETTY MISDEMEANOR

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	COMPLAINT -- SUMMONS FOR MISDEMEANOR OR PETTY MISDEMEANOR
vs.	)	
_____, Defendant.	)	District Court File No._____

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that Complainant believes there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE:

The above facts constitute Complainant's basis for believing that the above-named Defendant, on the _____ day of _____, 19__ at _____, (location) in the above-named County, committed the following described

OFFENSE

Charge:_____ in violation of Section:_____

(description)

THEREFORE, Complainant requests that the Defendant, subject to bail or conditions of release where applicable,

(1) be arrested or that other lawful steps be taken to obtain the Defendant's appearance in court; or

(2) be detained, if already in custody, pending further proceedings; and that the Defendant otherwise be dealt with according to law.

_____
(Name of Complainant)
Complainant

Being duly authorized to prosecute the offense charged, _____ (Prosecuting Attorney) hereby approves this Complaint.

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in Court, or Defendant's detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the _____ day of _____, 19 , at _____ o'clock ___.m., before the above-named Court at _____ (Room Number) _____ (Place) _____ (Address) to answer this complaint.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest may be issued.

This Complaint -- Summons was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this _____ day of , 19 .

_____
Issuing Officer*

Sworn testimony has been given before the Issuing Officer by the following witnesses:

* The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 2

COMPLAINT -- WARRANT FOR MISDEMEANOR

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	) COMPLAINT -- WARRANT FOR MISDEMEANOR) District Court File No._____

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that Complainant believes there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE:

The above facts constitute Complainant's basis for believing that the above-named Defendant, on the _____ day of _____, 19__ at _____, (location) in the above-named County, committed the following described

OFFENSE

Charge:_____ in violation of Section:_____

(description)

THEREFORE, Complainant requests that the Defendant, subject to bail or conditions of release where applicable,

(1) be arrested or that other lawful steps be taken to obtain the Defendant's appearance in court; or

(2) be detained, if already in custody, pending further proceedings; and that the Defendant otherwise be dealt with according to law.

_____
(Name of Complainant)
Complainant

Being duly authorized to prosecute the offense charged, _____ hereby approves this Complaint.

(Prosecuting Attorney)

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in Court, or Defendant's detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

WARRANT

TO: The Sheriff of the above-named County, or any other person authorized by law to execute this Warrant.

NOW, THEREFORE, in the name of the State of Minnesota, I hereby order that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary dfelay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

TO BE COMPLETED AND SIGNED BY ISSUING OFFICER IF APPLICABLE.

As the offense stated is a misdemeanor and as the following exigent circumstances exist:

I hereby direct that this warrant may be executed at any time of the day or night and on Sundays.

_____
Issuing Officer*

Conditions of Release:

Amount of Bail:_____

This Complaint--Warrant was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this _____ day of , 19 .

_____
Issuing Officer*

Sworn testimony has been given before the Issuing Officer by the following witnesses:

* The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 3

COMPLAINT -- ORDER OF DETENTION
FOR MISDEMEANOR

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	COMPLAINT--ORDER OF DETENTION FOR MISDEMEANOR
vs.	)	
_____, Defendant.	)	District Court File No._____

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that Complainant believes there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE:

The above facts constitute Complainant's basis for believing that the above-named Defendant, on the _____ day of _____, 19__ at _____, (location) in the above-named County, committed the following described

OFFENSE

Charge:_____ in violation of Section:_____

(description)

THEREFORE, Complainant requests that the Defendant, subject to bail or conditions of release where applicable,

(1) be arrested or that other lawful steps be taken to obtain the Defendant's appearance in court; or

(2) be detained, if already in custody, pending further proceedings; and that the Defendant otherwise be dealt with according to law.

_____
(Name of Complainant)
Complainant

Being duly authorized to prosecute the offense charged,___
_____ hereby approves this
(Prosecuting Attorney)
Complaint.

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in Court, or Defendant's detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

ORDER OF DETENTION

Therefore, since the Defendant is already in custody, I hereby order that, subject to bail or conditions of release, the Defendant continue to be detained pending further proceedings.

Conditions of Release:

Amount of Bail:_____

This complaint-- Order of Detention was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this _____ day of _____, 19__.

_____
Issuing Officer*

Sworn testimony has been given before the Issuing Officer by the following witnesses:

* The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 4
CITATION FOR MISDEMEANOR OR
PETTY MISDEMEANOR

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF _____ — _____ JUDICIAL DISTRICT

_____, Plaintiff, vs. _____, Defendant — CITATION FOR MISDEMEANOR OR PETTY MISDEMEANOR

District Court File No._____

TO: The above-named Defendant.

YOU ARE HEREBY ORDERED:

1. To appear on the _____ day of _____, 19___, at the above-named County's Violations Bureau at _____ (Room No.) _____ (Place), _____ (Address), to

(a) Plead Not Guilty to the offense named below and have court appearance date set, at which time you will answer the charge; or

(b) Plead Guilty to the offense named below and pay the fine in the amount indicated on the reverse side of this citation.

OR

2. To pay by mail the indicated fine should you wish to plead guilty without appearing at the Violations Bureau. (See reverse side for instructions and information concerning these alternatives.)

YOU ARE CHARGED with committing the offense of

Charge:_____ in violation of Section:_____ on the _____ day of _____, 19___. at_____ (location).

If you fail to respond to this citation in one of the manners indicated, a warrant for your arrest may be issued.

Dated:_____

_____
(Officer's Signature and Title or Badge No.)

REVERSE SIDE OF CITATION
INSTRUCTIONS AND INFORMATION

I. The fine upon pleading guilty, WITHOUT a court appearance, to the offense you are charged with is:

_____
Amount of Fine

II. IF YOU WISH TO PLEAD GUILTY to the offense charged on the front of this Citation, READ AND SIGN the statement below and mail or deliver the indicated amount of fine to:

_____COUNTY VIOLATIONS BUREAU
Name of County, Address, City, State, Zip)

STATEMENT

I, the undersigned Defendant, UNDERSTAND BY PAYING THE FINE

1. That by paying the fine I am pleading guilty to the offense charged on the front of this Citation.

2. That I possess the following RIGHTS which I hereby VOLUNTARILY WAIVE:

a) the right to a trial to the Court or to a jury,

b) the right to be represented by counsel,

c) the right to be presumed innocent until proven guilty beyond a reasonable doubt,

d) the right to confront and cross-examine all witnesses against me, and

e) the right to either remain silent or to testify on my own behalf.

3. That should I, instead of pleading guilty, appear in Court, the maximum possible sentence upon conviction could exceed the indicated amount of fine.

_____
Defendant

III. IF YOU DO WISH TO PLEAD GUILTY AT THIS TIME, YOU

1. Must appear at the time and place stated on the front of this Citation, and

2. May, if convicted after appearing in Court, be subject to a maximum possible sentence which exceeds the indicated amount of fine.

FORM 5
CITATION FOR FELONY OR
GROSS MISDEMEANOR

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF _____ | _____ JUDICIAL DISTRICT

_____, Plaintiff, vs. _____, Defendant. | CITATION FOR FELONY OR GROSS MISDEMEANOR

District Court File No._____

TO: The Above-Named Defendant,

YOU ARE HEREBY SUMMONED to appear on the _____ day of _____, 19__, at _____ o'clock____.m., before the above-named Court at _____, _____, _____, to answer the charge
(Room Number) (Place) (Address)
that you committed on the _____ day of _____, 19___, at _____, the following described
(location)

OFFENSE

Charge:_____ in violation of Section:_____

Maximum Sentence:_____

If you fail to appear in response to this Citation, a Warrant for your arrest may be issued.

Dated:_____

_____
(Officer's signature and title or badge number)

FORM 6

COMPLAINT -- FOR MISDEMEANOR
OR PETTY MISDEMEANOR

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	COMPLAINT FOR MISDEMEANOR OR
vs.	)	PETTY MISDEMEANOR*
_____, Defendant.	)	District Court File No._____

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that Complainant believes there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE:

The above facts constitute Complainant's basis for believing that the above-named Defendant, on the _____ day of _____, 19__ at _____ (location) _____, in the above-named County, committed the following described

OFFENSE

Charge:_____ in violation of Section:_____

(description)

THEREFORE, Complainant requests that the Defendant, subject to bail or conditions of release where applicable,

(1) be arrested or that other lawful steps be taken to obtain the Defendant's appearance in court; or

(2) be detained, if already in custody, pending further proceedings; and that the Defendant otherwise be dealt with according to law.

_____
(Name of Complainant)

Being duly authorized to prosecute the offense charged,___
_____ hereby approves this
(Prosecuting Attorney)
Complaint.

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

* May be used when a Complaint is demanded by the Defendant.

F INDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in Court, or Defendant's detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

This Complaint was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this_____
_____ day of _____ , 19__.

_____
Issuing Officer*

Sworn testimony has been given before the Issuing Officer by the following witnesses:

* The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 7
APPLICATION AND SUMMONS FOR OBTAINING
DEFENDANT'S APPEARANCE IN COURT FOR FAILURE
TO APPEAR IN RESPONSE TO
SUMMONS OR CITATION

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	APPLICATION AND SUMMONS FOR OBTAINING DEFENDANT'S APPEARANCE IN COURT FOR FAILURE TO APPEAR IN RESPONSE TO SUMMONS OR CITATION District Court File No._____

APPLICATION FOR OBTAINING DEFENDANT'S APPEARANCE IN COURT

As the above-named Defendant has failed to appear in Court as instructed by the Complaint -- Summons served upon the Defendant or Citation issued to the Defendant by _____ on the _____day of_____, 19___, I therefore request that Defendant be summoned to appear in court and otherwise be dealt with according to law.

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

SUMMONS

TO: The above-named Defendant.

AS PROBABLE CAUSE has previously been established by the Complaint-- Summons or Complaint Following Citation dated and filed on the _____ day of_____, 19___, charging the Defendant with the offense of _____ and as you failed to appear in Court as instructed in the Complaint--Summons or Citation.

YOU ARE HEREBY SUMMONED to appear on the _____ day of _____, 19___, at ____o'clock ____.m., before the above-named Court at _____, _____,
(Room No.) (Place)
_____, for failing to appear in
(Address)
Court as instructed in the Complaint -- Summons or Citation previously issued to you.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest may be issued.

_____

Issuing Officer*

*The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 8
APPLICATION AND WARRANT FOR OBTAINING
DEFENDANT'S APPEARANCE IN COURT
FOR FAILURE TO APPEAR IN RESPONSE
TO SUMMONS OR CITATION

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____ Plaintiff, vs. _____, Defendant.	APPLICATION AND WARRANT FOR OBTAINING DEFENDANT'S APPEARANCE IN COURT FOR FAILURE TO APPEAR IN RESPONSE TO SUMMONS OR CITATION District Court File No.

APPLICATION FOR WARRANT

The above-named Defendant has failed to appear in Court as instructed in the Complaint -- Summons served upon the Defendant or the Citation issued to the Defendant by _____ on the _____ day of _____, 19___; I therefore request that a Warrant of Arrest issue for the Defendant, so that the Defendant may be arrested to obtain the Defendant's appearance in Court and that the Defendant otherwise be dealt with according to law.

Dated: _____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

WARRANT

TO: The Sheriff of the above-named County or any other person authorized by law to execute this Warrant.

AS PROBABLE CAUSE has previously been established by the Complaint -- Summons or Complaint following Citation dated and filed on the _____ day of _____, 19 , charging the Defendant with the offense of _____, and as the Defendant has failed to appear in Court as instructed in the Complaint -- Summons or Citation; in the name of the State of Minnesota, I hereby order that the above-named Defendant be arrested and brought promptly before the above-named Court (if in session, and if not before a Judge of Judicial Officer of such Court without unnecessary delay, and in any event, not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

Conditions of Release:

Amount of Bail:_____

Dated:_____ _____
Issuing Officer*

*The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 9
APPLICATION AND SUMMONS FOR OBTAINING
DEFENDANT'S APPEARANCE FOR
VIOLATION OF CONDITIONS OF RELEASE,
PURSUANT TO RULE 6.03, SUBD. 1

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	APPLICATION AND SUMMONS FOR OBTAINING DEFENDANT'S
vs.	)	APPEARANCE FOR VIOLATION OF CONDITIONS OF RELEASE,
_____, Defendant	)	PURSUANT TO RULE 6.03, SUBD. 1
	)	District Court File No. _____

APPLICATION FOR OBTAINING DEFENDANT'S APPEARANCE

The following facts constitute PROBABLE CAUSE to believe that the above-named Defendant has violated conditions of release:

THEREFORE, I request, that pursuant to Rule 6.03, subd. 1, Minnesota Rules of Criminal Procedure, that Defendant be summoned to appear and be otherwise dealt with according to law.

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

SUMMONS

TO: The above-named Defendant.

YOU ARE HEREBY SUMMONED to appear on the _____ day of _____, 19___, at _____ o'clock ____.m., before the above-named Court at _____, _____, _____
(Room No.) (Place) (Address)
_____, pursuant to Rule 6.03, subd. 1, Minnesota Rules of Criminal Procedure, to determine if you have violated your conditions of release.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest may be issued.

_____
Issuing Officer*

*The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 10
APPLICATION AND WARRANT FOR OBTAINING
DEFENDANT'S APPEARANCE FOR VIOLATION
OF CONDITIONS OF RELEASE,
PURSUANT TO RULE 6.03, SUBD. 1

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	APPLICATION AND WARRANT FOR OBTAINING DEFENDANT'S APPEARANCE FOR VIOLATION OF CONDITIONS OF RELEASE, PURSUANT TO RULE 6.03, SUBD. 1
vs.	)	
_____, Defendant.	)	District Court File No._____

APPLICATION FOR WARRANT

The following facts constitute PROBABLE CAUSE to believe that the above-named Defendant has violated conditions of release:

THEREFORE, I request that pursuant to Rule 6.03, subd. 1, Minnesota Rules of Criminal Procedure, a Warrant of Arrest issue for the above-named Defendant so that the Defendant may be arrested to obtain the Defendant's appearance, and that the Defendant otherwise be dealt with according to law.

Dated:_____ _____

(Prosecuting Attorney)
Name:
Attorney License No:
Address:
Telephone No:

WARRANT

(To be issued only if it reasonably appears that there is a substantial likelihood that the Defendant will fail to respond to a Summons or when the whereabouts of the Defendant is unknown.)

TO: The Sheriff of the above-named County or any other person authorized by law to execute this Warrant.

Upon the above Application by the Prosecuting Attorney and pursuant to Rule 6.03, subd. 1, Minnesota Rules of Criminal Procedure, in the name of the State of Minnesota, I hereby order that the above-named Defendant, having previously been released, be arrested and taken immediately before the Judge, Judicial Officer or Court which released the Defendant.

TO BE COMPLETED AND SIGNED BY ISSUING OFFICER IF APPLICABLE.

As the offense stated is a misdemeanor and as the following exigent circumstances exist:

I hereby direct that this warrant may be executed at any time of the day or night and on Sundays.

Conditions of Release:

Amount of Bail:_____

Dated:_____ _____

Issuing Officer*

*The name and title of the Issuing Officer should be printed or stamped following the Issuing Officer's signature.

FORM 11
WAIVER OF COUNSEL FOR MISDEMEANOR, PURSUANT TO RULE 5.02, SUBD. 2

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	WAIVER OF COUNSEL FOR MISDEMEANOR, PURSUANT TO RULE 5.02, SUBD. 2
vs.	)	
	)	District Court File No.__
_____, Defendant.	)	

Having been informed of my right to be represented by counsel, I hereby, voluntarily and with full knowledge and understanding of my rights, waive my right to counsel at this time.

TAKE NOTE: This waiver does not waive the future right to counsel during other stages of the proceeding.

Dated:_____

_____
(Defendant)

APPROVED BY:

_____
Judge of District Court

FORM 12
DEMAND FOR TRIAL PURSUANT TO
RULE 6.06 OR RULE 11.10

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____, Plaintiff,	)	DEMAND FOR TRIAL PURSUANT TO RULE 6.06 OR RULE 11.10
vs.	)	
	)	District Court File No.__
_____, Defendant.	)	

I hereby demand that trial in the above-named case be commenced within sixty (60) days from the date of this demand or the entry of a plea of not guilty, whichever is later.

Dated:_____

_____
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 13
NOTICE BY PROSECUTING ATTORNEY OF
EVIDENCE AND IDENTIFICATION PROCEDURES,
PURSUANT TO RULE 7.01

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	NOTICE BY PROSECUTING ATTORNEY OF EVIDENCE AND IDENTIFICATION PROCEDURES, PURSUANT TO RULE 7.01 District Court File No.__

TO: The above-named Defendant.

Pursuant to Rule 7.01, Minnesota Rules of Criminal Procedure, I hereby advise you that in the above-named case, the prosecution has:

_____ Evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping.

_____ Confessions, admissions, or statements in the nature of confessions made by the defendant.

_____ Evidence against the defendant discovered as the result of confessions, admissions, or statements in the nature of confessions made by the defendant.

_____ Employed the following identification procedures during its investigation:

_____ Lineups.

_____ Other observations of the defendant.

_____ The exhibition of photographs of the defendant or any other person.

_____ Others _____

(More specific information may be obtained by contacting the Prosecuting Attorney.)

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 14
NOTICE BY PROSECUTING ATTORNEY OF EVIDENCE OF ADDITIONAL OFFENSE(S) TO BE OFFERED AT TRIAL PURSUANT TO RULE 7.02

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	NOTICE BY PROSECUTING ATTORNEY OF EVIDENCE OF ADDITIONAL OFFENSE(S) TO BE OFFERED AT TRIAL PURSUANT TO RULE 7.02 District Court File No.__

TO: The above-named Defendant.

Pursuant to Rule 7.02, Minnesota Rules of Criminal Procedure, I hereby advise you that in the above-named case, the Prosecution may offer at trial, under any exception to the general exclusionary rule, evidence of the following additional offense(s):

1. That the above-named Defendant on the ___ day of _____, 19___, at _____ (location) in the County of _____, committed the following described

OFFENSE

Charge:_____, in violation of Section:____:

(description)

2. That the above-named Defendant on the ___ day of _____, 19___, at _____ (location) in the County of _____, committed the following described

OFFENSE

Charge:_____, in violation of Section:____:

(description)

3. That the above-named Defendant on the ___ day of _____, 19___, at _____ (location) in the County of _____,

committed the following described

OFFENSE

Charge:_____, in violation of Section:____:

(description)

(Further offenses should be set forth below using the above structure.)

TAKE NOTE:

1. Rule 7.02 states, "Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial."

2. This notice need not include offenses

   (a) for which the Defendant has been previously prosecuted,

   (b) that may be offered in rebuttal of the Defendant's character witnesses, or

   (c) which are a part of the occurrence or episode out of which the offense charged against Defendant arose.

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 15
DEMAND OR WAIVER OF MISDEMEANOR EVIDENTIARY HEARING
PURSUANT TO RULES 5.04, SUBD. 4 AND 12.04

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff,	DEMAND OR WAIVER OF MISDEMEANOR EVIDENTIARY HEARING PURSUANT TO RULES 5.04, SUBD. 4 AND 12.04
vs.	
_____, Defendant.	District Court File No.__

The (Prosecuting Attorney)(Defendant) hereby (demands) (waives) an evidentiary hearing to determine in the above case the admissibility of evidence contained in the Notice by Prosecuting Attorney given pursuant to Rule 7.01, Minnesota Rules of Criminal Procedure.

Dated:_____

_____
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 16
NOTICE OF PROSECUTING ATTORNEY IN FELONY CASE
THAT MATTER WILL BE PRESENTED
TO GRAND JURY

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff,	NOTICE OF PROSECUTING ATTORNEY IN FELONY CASE THAT MATTER WILL BE PRESENTED TO GRAND JURY
vs.	
_____, Defendant.	District Court File No.__

Pursuant to Rule 8.01, Minnesota Rules of Criminal Procedure, the State advises the Court that the charge in the above entitled matter:

_____ 1. is a homicide

_____ 2. carries a penalty of life imprisonment

_____ 3. is a homicide and carries a penalty of life imprisonment

and will be presented to the Grand Jury on

_____(date).

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 17
MOTION TO EXTEND TIME OF OMNIBUS HEARING
IN FELONY OR GROSS MISDEMEANOR CASE
PURSUANT TO RULE 8.04(c)

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
State of Minnesota, Plaintiff, vs. _____, Defendant.	MOTION TO EXTEND TIME OF OMNIBUS HEARING IN FELONY OR GROSS MISDEMEANOR CASE PURSUANT TO RULE 8.04(C) District Court File No.__

Pursuant to Rule 8.04(c), Minnesota Rules of Criminal Procedure, the undersigned moves the Court to extend the time of the Omnibus Hearing in the above entitled matter to _____. Said motion is based upon the following reasons:

Dated:_____

_____
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 18
NOTICE OF DEFENSE(S) AND DEFENSE WITNESSES
FOR FELONY OR GROSS MISDEMEANOR CASES
PURSUANT TO RULE 9.02, SUBD. 1(3)(a)

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	NOTICE OF DEFENSE(S) AND DEFENSE WITNESSES FOR FELONY OR GROSS MISDEMEANOR CASES PURSUANT TO RULE 9.02, SUBD. 1(3)(a) District Court File No.__
vs.	)	
_____, Defendant.	)	

TO: The Prosecuting Attorney in the above-named case:

I hereby inform you, pursuant to Rule 9.02, subd. 1(3)(a), Minnesota Rules of Criminal Procedure, that in the above-named case, the Defendant intends to rely upon the following defense(s) at trial:

_____ Self-Defense

_____ Mental Illness or Deficiency

_____ Duress

_____ Alibi; following is the specific place or places where the Defendant contends he was when the alleged offense occurred:

_____ Double Jeopardy

_____ Statute of Limitations

_____ Collateral Estoppel

_____ Defense under Minnesota Statutes Section 609.035

_____ Intoxication

_____ Entrapment

Defendant on this issue elects trial by

_____ jury

_____ the Court at the Omnibus Hearing.

(NOTE: If this issue is submitted to the Court, defendant must waive jury trial on the issue. See Form Number 34 for the waiver.)

The following facts form the basis for the defense:

_____ Others (specify):

The following are the names and addresses of persons whom the Defendant intends to call as Witnesses at trial (specify if an alibi witness):

Dated:_____

_____
(Attorney for Defendant)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 19
MOTION BY PROSECUTING ATTORNEY FOR
DISCOVERY BY ORDER OF THE COURT IN FELONY
OR GROSS MISDEMEANOR CASE

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	MOTION BY PROSECUTING ATTORNEY FOR DISCOVERY BY ORDER OF THE COURT
vs.	)	IN FELONY OR GROSS MISDEMEANOR CASE
_____, Defendant.	)	District Court File No.__

Pursuant to Rule 9.02, subd. 2(1), Minnesota Rules of Criminal Procedure, the State informs the Court that one or more of the discovery procedure(s) marked below will be of material aid in determining whether the Defendant in the above entitled matter committed the offense charged, and moves this Court to order the Defendant to:

_____ (a) Appear in a lineup;
_____ (b) Speak for identification by witnesses to the offense or for the purpose of taking voice prints;
_____ (c) Be fingerprinted or permit palm prints or footprints to be taken;
_____ (d) Permit measurements of the Defendant's body to be taken;
_____ (e) Pose for photographs not involving re-enactment of a scene;
_____ (f) Permit the taking of samples of the Defendant's (blood) (hair) (saliva) (urine) (other)_____;
_____ (g) Provide specimens of the Defendant's handwriting;
_____ (h) Submit to reasonable physical or medical inspection.

The discovery procedure(s) marked above will be of material aid in this case for the following reasons:

The following facts constitute probable cause to believe that a blood test will aid in establishing the guilt of the Defendant:

The state further moves that the Defendant be ordered to appear on _____ at _____
(time) (place)
and submit to the aforementioned discovery procedure(s).

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 20
FINDINGS AND ORDER FOR DISCOVERY
IN FELONY OR GROSS MISDEMEANOR CASE

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	FINDINGS AND ORDER FOR DISCOVERY IN FELONY OR GROSS MISDEMEANOR CASE
vs.	)	
_____, Defendant.	)	District Court File No.__

Pursuant to Rule 9.02, subd. 2(1), Minnesota Rules of Criminal Procedure, the Court finds that the discovery procedure(s) marked below will be of material aid in determining whether the defendant in the above entitled matter committed the offense charged, and hereby orders the defendant to:

_____ (a) Appear in a lineup;
_____ (b) Speak for identification by witnesses to the offense or for the purpose of taking voice prints;
_____ (c) Be fingerprinted or permit palm prints or footprints to be taken;
_____ (d) Permit measurements of the Defendant's body to be taken;
_____ (e) Pose for photographs not involving re-enactment of a scene;
_____ (f) Permit the taking of samples of the Defendant's (blood) (hair) (saliva) (urine) (other)_____;

(The Court finds that there is probable cause to believe that a blood test will aid in establishing the guilt of the defendant.)

_____ (g) Provide specimens of the Defendant's handwriting;
_____ (h) Submit to reasonable physical or medical inspection.

The defendant is therefore ordered to appear at the time and place indicated below and submit to the aforementioned discovery procedure(s):

Dated:_____

_____
Judge of District Court

FORM 21
MOTION TO DISMISS OR GRANT APPROPRIATE RELIEF, PURSUANT TO RULES 10, 11.03, 12.02, 17.06, 32 OR 33

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	MOTION TO DISMISS OR GRANT APPROPRIATE RELIEF, PURSUANT TO RULES 10, 11.03, 12.02, 17.06, 32, OR 33 District Court File No.__

The undersigned moves:

_____ 1. That this case be dismissed.

_____ 2. That the following relief be granted:

Said motion to be granted for the following reasons:

TAKE NOTE: The failure to include any defense, objection, issue, or request available to the moving party at this time, constitutes a waiver thereof. (Lack of jurisdiction over the offense, failure of the indictment or complaint to charge an offense, and any other defense, which may be so designated in the future by judicial decision, are excepted.)

Dated:_____

_____
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 22
NO INDICTMENT RETURNED PURSUANT TO
RULE 18.07

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	NO INDICTMENT RETURNED (NO BILL) PURSUANT TO RULE 18.07
vs.	)	
	)	District Court File No.__
_____, Defendant.	)	

The Grant Jury, after due consideration, reports that no indictment (a "no bill") has been returned against the above-named Defendant relative to the offense of:

Charge:_____ in violation of Section:_____

Dated:_____

_____
(Foreperson of the Grand Jury)

FORM 23
WARRANT UPON INDICTMENT PURSUANT TO
RULE 19.02, SUBD. 1

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff,	WARRANT UPON INDICTMENT PURSUANT TO RULE 19.02, SUBD. 1
vs.	
_____, Defendant.	District Court File No.__

TO: The Sheriff of the above-named County or any other person authorized by law to execute this Warrant.

WHEREAS the above-named Defendant has been indicted on the _____ day of _____, 19_____, by the Grand Jury of the above-named County, Minnesota, for the offense of:

Charge:_____ in violation of Section:_____; in the name of the State of Minnesota, I hereby order that the above-named Defendant be apprehended and arrested without delay and brought promptly before this Court.

Conditions of Release:_____

_____

_____

Amount of Bail:_____

Dated:_____ _____
Judge of District Court

FORM 24
SUMMONS UPON INDICTMENT PURSUANT
TO RULE 19.02, SUBD. 2

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	SUMMONS UPON INDICTMENT PURSUANT TO RULE 19.02, SUBD. 2 District Court File No.__

TO: The above-named Defendant.

YOU ARE HEREBY SUMMONED to appear on the _____ day of _____, 19 _____, at _____o'clock _____ .m., before the above-named Court at _____, _____, (room number) (place) _____ (address) to answer the Indictment, a copy of which is attached.

IF YOU FAIL TO APPEAR in response to this Summons, a Warrant for your arrest shall be issued.

_____
Judge of District Court

FORM 25
GRAND JURY SUBPOENA--SUBPOENA
DUCES TECUM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF _____ | _____ JUDICIAL DISTRICT

IN THE MATTER OF	)	GRAND JURY SUBPOENA--
THE INVESTIGATION OF	)	SUBPOENA DUCES TECUM
THE GRAND JURY OF	)	File No._____
_____COUNTY	)	

THE STATE OF MINNESOTA

TO:_____

You are hereby ordered to appear as a witness before the Grand Jury of the above-named County at _____ (location) on the _____ day of _____, 19___ at_____ o'clock _____.m. and to:

_____ bring with you
_____ produce, prior to the above-stated time, on the _____ day of _____,19___, at _____ (location) the following books, papers, documents, or other objects:

WARNING: Failure to obey a Subpoena without adequate excuse is a Contempt of Court.

Dated:_____

WITNESS THE HONORABLE
[JUDGE'S NAME]
Judge of District Court

_____
Clerk of District Court

FORM 26
DISTRICT COURT SUBPOENA--
SUBPOENA DUCES TECUM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF _____ | _____ JUDICIAL DISTRICT

_____, Plaintiff, vs. _____, Defendant.) | DISTRICT COURT SUBPOENA-SUBPOENA DUCES TECUM District Court File No.__

THE STATE OF MINNESOTA

TO: _____

You are hereby ordered to appear as a witness before the above-named Court at _____ (location) on the _____ day of _____, 19___ at _____ o'clock _____.m. to give evidence on the part of the:

_____ State
_____ Defendant

in the above-named case and to:

_____ bring with you
_____ produce, prior to the above-stated time, on the _____ day of _____,19___, at _____ (location) the following books, papers, documents, or other objects:

WARNING: Failure to obey a Subpoena without adequate excuse is a Contempt of Court.

Dated: _____

WITNESS THE HONORABLE
[JUDGE'S NAME]
Judge of District Court

_____
Clerk of District Court

FORM 27
FINDINGS OF FACT AND ORDER INCLUDING
PETITION FOR JUDICIAL COMMITMENT, FOR
MISDEMEANOR CASE, PURSUANT TO RULE 20.01

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
_____, Plaintiff, vs. _____, Defendant.	FINDINGS OF FACT AND AND ORDER INCLUDING PETITION FOR JUDICIAL COMMITMENT, FOR MISDEMEANOR CASE, PURSUANT TO RULE 20.01
	District Court File No.__

This matter came on for hearing before the Court, the Honorable _____, _____Judge presiding. _____, Prosecuting Attorney, appeared for the State. The defendant appeared in person and was represented by Attorney _____.

This Court finds that based on all the files, records, and proceedings in this case, there is reason to believe that the defendant may be mentally ill or deficient and that proceedings should be commenced under the Minnesota Hospitalization and Commitment Act.

Pursuant to the Minnesota Hospitalization and Commitment Act, this Court represents that:

1. Defendant was born _____, 19 ____, at _____.

2. Defendant resides at _____,Minnesota.

3. Defendant's spouse and nearest kindred are:

(Name) (Relationship) (Age) (Address)

_____
_____
_____

4. Defendant (is) (is not) a Veteran.

5. Defendant is believed to be (mentally ill) (mentally deficient) because_____
_____
_____

6. Defendant is further believed to be (mentally ill) (mentally deficient), as evidenced by the physician's statement furnished herewith.

7. The Court has been unable to procure a physician's statement because_____
_____

8. Defendant is presently at_____
_____

9. Defendant was last committed to the State Hospital at _____, Minnesota, by the _____ Probate Court on or about _____,19__, and has received psychiatric treatment at the following hospitals:
_____
_____
_____

10. Defendant has been under the care of Dr._____ whose office address is:_____
_____
_____

This Court orders that:

a. The prosecuting attorney shall immediately:

1. Deliver a copy of these Findings of Fact, and Order Including Petition for Judicial Commitment to the county welfare department.

2. File these Findings of Fact and Order Including Petition for Judicial Commitment in the probate court.

3. Request the probate court to immediately issue such orders as may be necessary to provide for the examination of the proposed patient.

4. Cause to be delivered to the sheriff any order of the probate court directing the sheriff to transport the proposed patient to a designated hospital or other place for the purpose of an examination prior to the hearing on the petition for judicial commitment.

b. The sheriff shall immediately transport the proposed patient to a designated hospital or other place as directed by any order of the probate court.

c. The county attorney shall appear and represent the petitioner at the commitment hearing.

d. If the determination is commitment or other reasonable alternative disposition including, but not limited to, out-patient care, informal or voluntary hospitalization in a private or public facility, appointment of a guardian or release before commitment as provided for in Minn. Stat. §2538.09, subd. 4, the charge of _____ _____ is dismissed in accordance with Rule 20.01 of the Minnesota Rules of Criminal Procedure.

e. If the determination is dismissal of the petition, the sheriff shall immediately cause the defendant to be brought before this court.

f. The proceedings in this matter are suspended pending the commitment and other determinations. Bail or other conditions of release as to this matter are continued subject to the order of this court or until and unless this matter is dismissed.

Dated: _____

_____
District Court Judge

FORM 28
FELONY OR GROSS MISDEMEANOR FINDINGS OF FACT;
ORDER INCLUDING PETITION FOR JUDICIAL COMMITMENT;
ORDER FOR MENTAL EXAMINATION TO DETERMINE

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT

_____ JUDICIAL DISTRICT

_____, Plaintiff, vs. _____, Defendant.	FELONY OR GROSS MISDEMEANOR FINDINGS OF FACT; ORDER INCLUDING PETITION FOR JUDICIAL COMMITMENT; ORDER FOR MENTAL EXAMINATION TO DETERMINE: (1)DEFENDANT'S COMPETENCY TO PROCEED WITH CRIMINAL CASE (2)MENTAL ILLNESS OR DEFICIENCY AT TIME OF COMMISSION OF THE OFFENSE District Court File No.___

This matter came on for hearing before the Court, the Honorable _____, District Judge presiding. _____, Assistant County Attorney, appeared for the State. The Defendant appeared in person and was represented by Attorney _____.

This Court finds that based on all the files, records, and proceedings in this case: There is reason to believe that the defendant may be mentally ill or deficient and that proceedings should be commenced under the Minnesota Hospitalization and Commitment Act; there is reason to believe the Defendant is incompetent to proceed with the criminal case; the Defendant has notified the prosecuting attorney of an intention to assert a defense of mental illness or mental deficiency.

Pursuant to the Minnesota Hospitalization and Commitment Act, this Court represents that:

1. Defendant was born _____, 19 ____, at _____.

2. Defendant resides at _____,Minnesota.

3. Defendant's spouse and nearest kindred are:

(Name) (Relationship) (Age) (Address)

_____

_____

_____

4. Defendant (is) (is not) a Veteran.

5. Defendant is believed to be (mentally ill) (mentally deficient) because_____

_____

_____

6. Defendant is further believed to be (mentally ill) (mentally deficient), as evidenced by the physician's statement furnished herewith.

7. The Court has been unable to procure a physician's statement because_____

_____

8. Defendant is presently at_____

_____

9. Defendant was last committed to the State Hospital at _____, Minnesota, by the _____ Probate Court on or about _____,19__, and has received psychiatric treatment at the following hospitals:

_____

_____

_____

10. Defendant has been under the care of Dr._____ whose office address is:_____

_____

_____

This Court orders that:

A. The prosecuting attorney shall immediately:

1. Deliver a copy of these Findings of Fact, and Order Including Petition for Judicial Commitment to the county welfare department.

2. File these Findings of Fact and Order Including Petition for Judicial Commitment in the probate court.

3. Request the probate court to immediately issue such orders as may be necessary to provide for the examination of the proposed patient.

4. Cause to be delivered to the sheriff any order of the probate court directing the sheriff to transport the proposed patient to a designated hospital or other place for the purpose of an examination prior to the hearing on the petition for judicial commitment.

B. The sheriff shall immediately transport the proposed patient to a designated hospital or other place as directed by any order of the probate court.

C. The prosecuting attorney shall appear and represent the petitioner at the commitment hearing.

D. The criminal proceedings are continued pending the commitment and other determinations.

E. The Probate Court shall transmit its findings to the District Court, including:

1. Its findings of fact and conclusions of law.

2. A copy of the examiner's report.

3. A determination as to whether defendant may be committed under the Minnesota Hospitalization and Commitment Act, and if so whether the defendant is dangerous to the public.

4. As to competency to proceed with the criminal case:

(a) A diagnosis of the mental condition of the defendant.

(b) If the defendant is mentally ill or mentally deficient, an opinion as to: (i)the Defendant's capacity to understand the criminal proceedings and to participate in the defense; (ii)whether the Defendant presents an imminent risk of serious danger to another person is imminently suicidal or otherwise needs emergency intervention; (iii)the treatment required, if any, for the Defendant to attain or maintain competence with an explanation of the appropriate treatment alternatives by order of choice, including the extent to which the Defendant can be treated without being committed to an institution and the reasons for rejecting such treatment if institutionalization is recommended; and (iv)whether there is a substantial probability that with treatment, or otherwise, the Defendant will ever attain the competency to proceed and if so, in approximately what period of time, and the availability of the various types of acceptable treatment in the local geographical area, specifying the agencies or settings in which the treatment might be obtained and whether it would be available to an outpatient.

(c) A statement of the factual basis upon which the diagnosis and opinion are based.

(d) If the examination could not be conducted by reason of the Defendant's unwillingness to participate therein, a statement to that effect with an opinion, if possible, as to whether the Defendant's unwillingness was the result of mental illness or deficiency.

5. As to mental illness or deficiency at time of commission of offense:

(a) A diagnosis of the Defendant's medical condition at the time of the commission of the offense.

(b) An opinion as to whether, because of mental illness or deficiency, the Defendant at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which Defendant is charged or that it was wrong.

(c) A statement of the factual basis upon which the diagnosis and any opinion are based.

(d) If the examination could not be conducted by reason of the Defendant's unwillingness to participate therein, a statement to that effect with an opinion, if possible, as to whether the Defendant's unwillingness was the result of mental illness or deficiency.

F. Following the examination by the Probate Court, the entry of the appropriate judgment is to be suspended and the Defendant returned to this Court.

G. If any of the mental-health professionals appointed to examine the Defendant concludes that the Defendant presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention, the mental-health professional shall promptly notify the prosecuting attorney, defense counsel, and this Court.

Dated:_____

_____
District Court Judge

FORM 29

FELONY OR GROSS MISDEMEANOR FINDINGS OF FACT; ORDER INCLUDING PETITION FOR JUDICIAL COMMITMENT OF A DEFENDANT FOUND INCOMPETENT TO PROCEED TO TRIAL, PURSUANT TO RULE 20.01, SUBDS. 4 AND 5

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT

_____ JUDICIAL DISTRICT

_____, Plaintiff, vs. _____, Defendant.	FELONY OR GROSS MISDEMEANOR FINDINGS OF FACT; ORDER INCLUDING PETITION FOR JUDICIAL COMMITMENT OF A DEFENDANT FOUND INCOMPETENT TO PROCEED TO TRIAL, PURSUANT TO RULE 20.01, SUBDS. 4 AND 5 District Court File No.___

This matter came on for hearing before the Court, the Honorable _____, District Judge presiding. _____, Assistant County Attorney, appeared for the State. The defendant appeared in person and was represented by Attorney _____.

This Court finds that based on all the files, records, and proceedings in this case: The defendant is mentally ill or mentally deficient so as to be incapable of understanding the criminal proceedings o participating in the defense; there is reason to believe the defendant may be mentally ill or deficient and that proceedings should be commenced under the Minnesota Hospitalization and Commitment Act.

Pursuant to the Minnesota Hospitalization and Commitment Act, this Court represents that:

1. Defendant was born _____, 19 ____, at _____.

2. Defendant resides at _____,Minnesota.

3. Defendant's spouse and nearest kindred are:

(Name) (Relationship) (Age) (Address)

_____

_____

_____

4. Defendant (is) (is not) a Veteran.

5. Defendant is believed to be (mentally ill) (mentally deficient) because_____
_____
_____

6. Defendant is further believed to be (mentally ill) (mentally deficient), as evidenced by the physician's statement furnished herewith.

7. The Court has been unable to procure a physician's statement because_____
_____

8. Defendant is presently at_____
_____

9. Defendant was last committed to the State Hospital at _____, Minnesota, by the _____ Probate Court on or about _____,19__, and has received psychiatric treatment at the following hospitals:
_____
_____
_____

10. Defendant has been under the care of Dr._____ whose office address is:_____
_____
_____

This Court orders that:

a. The prosecuting attorney shall immediately:

1. Deliver a copy of these Findings of Fact, and Order Including Petition for Judicial Commitment to the county welfare department.

2. File these Findings of Fact and Order Including Petition for Judicial Commitment in the probate court.

3. Request the probate court to immediately issue such orders as may be necessary to provide for the examination of the proposed patient.

4. Cause to be delivered to the sheriff any order of the probate court directing the sheriff to transport the proposed patient to a designated hospital or other place for the purpose of an examination prior to the hearing on the petition for judicial commitment.

b. The sheriff shall immediately transport the proposed patient to a designated hospital or other place as directed by any order of the probate court.

c. The prosecuting attorney shall appear and represent the petitioner at the commitment hearing.

d. The criminal proceedings are continued pending the commitment and other determinations.

e. If Defendant is committed, the head of the institution or designated place to which the Defendant is committed shall review the mental condition of the Defendant within 60 days from the date of the commitment order and report in writing to this District Court on the Defendant's mental condition with an opinion as to the Defendant's competency to proceed with the criminal case, and as to the need of the Defendant for further institutional care and treatment. Thereafter, if the commitment is continued, the head of the institution or designated place shall report to this District Court at least once every six months.

f. If Defendant is committed, the criminal proceedings are continued in accordance with Rule 20.01, Subd. 4(2) of the Minnesota Rules of Criminal Procedure.

g. If Defendant is not committed, the sheriff shall immediately cause the Defendant to be brought before this court.

h. Bail or other conditions of release as to the criminal proceedings are continued.

Dated: _____

_____
District Court Judge

FORM 30
FINDINGS OF FACT AND ORDER
FOR JUDICIAL COMMITMENT OF DEFENDANT
FOUND INCOMPETENT TO PROCEED
WITH FELONY OR GROSS MISDEMEANOR
CASE, PURSUANT TO RULE 20.01

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

_____ Plaintiff,	)	FINDINGS OF FACT AND ORDER FOR JUDICIAL COMMITMENT OF DEFENDANT FOUND INCOMPETENT TO PROCEED WITH FELONY OR GROSS MISDEMEANOR CASE, PURSUANT TO RULE 20.01 District Court File No._____
vs.	)	
_____ Defendant.	)	

This matter came on for hearing before the Court, the Honorable _____, District Judge presiding. _____, Assistant County Attorney, appeared for the State. The Defendant appeared in person and was represented by Attorney _____.

This Court finds that, based on all the files, records and proceedings in this case, the Defendant is mentally ill or mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense.

This Court orders that:

1. The judicial commitment proceedings in the Probate Court immediately be continued and completed by the Probate Court issuing such orders as may be necessary to commit the Defendant.

2. The head of the institution or designated place to which the Defendant is committed shall review the mental condition of the Defendant within 60 days from the date of the commitment order and report in writing to this District Court on the Defendant's mental condition with an opinion as to the Defendant's competency to proceed with the criminal case, and as to the need of the Defendant for further institutional care and treatment. Thereafter, if the commitment is continued, the head of the institution or designated place shall report to this District Court at least once every six months.

3. Bail or other conditions of release as to the criminal proceedings are continued.

4. The criminal proceedings are continued in accordance with

Rule 20.01, Subd. 4(2) of the Minnesota Rules of Criminal Procedure.

5. The County Attorney shall immediately file a copy of these findings of fact and order in the Probate Court and request the Probate Court to immediately issue such orders as may be necessary to commit the Defendant.

Dated: _____

_____
District Court Judge

FORM 31
DESIGNATION AS A PETTY MISDEMEANOR
IN A PARTICULAR CASE

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	DESIGNATION AS A PETTY MISDEMEANOR IN A PARTICULAR CASE
vs.	)	
_____, Defendant.	)	District Court File No._____

I, the Prosecuting Attorney, hereby certify to the above-named Court that in my opinion it is in the interests of justice that the above-named Defendant not be incarcerated, and thereby designate, subject to the consent of the above-named Defendant, that this alleged misdemeanor violation be treated as a petty misdemeanor.

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

I hereby consent to the treatment of the offense involved in this particular case as a petty misdemeanor.

_____
(Defendant)

I hereby approve the designation of the offense involved in this particular case as a petty misdemeanor.

_____
Judge or Judicial Officer*

*The name and title of the Judge or Judicial Officer should be printed or stamped following the signature.

FORM 32
WAIVER OF JURY TRIAL PURSUANT
TO RULE 26.01, SUBD. 1(2)(a)

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff	)	WAIVER OF JURY TRIAL PURSUANT TO RULE 26.01, SUBD. 1(2)(a)
vs.	)	
_____, Defendant.	)	District Court File No.

Having been advised by the Court of my right to trial by jury and having had an opportunity to consult with counsel, I do hereby, with the approval of this Court, waive my right to trial by jury.

Dated: _____

_____
(Defendant)

APPROVED BY:

_____
Judge of District Court

FORM 33
NOTICE OF APPEAL BY DEFENDANT
TO COURT OF APPEALS

STATE OF MINNESOTA

COUNTY OF_____

DISTRICT COURT

_____ JUDICIAL DISTRICT

_____, Plaintiff,
vs.
_____, Defendant.

NOTICE OF APPEAL BY DEFENDANT
TO COURT OF APPEALS
District Court File No._____
Date Judgment, Sentence or Order Entered:_____

TO: Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55155

State Attorney General
Address:_____
Telephone No.:_____

Clerk of District Court
Address:_____
Telephone no.:_____

Prosecuting Attorney
Address:_____
Telephone No.:_____

PLEASE TAKE NOTICE that the above-named Defendant hereby appeals to the Court of Appeals of the State of Minnesota from the following judgment or orders of the above-named District Court:

_____ Final judgment entered on the____day of_____, 19__;

_____ Order refusing or imposing conditions of release entered on the_____ day of_____, 19___;

_____ Order finding Defendant incompetent to stand trial entered on the ____ day of _____, 19__ (felony and gross misdemeanor cases only);

_____ Order granting a new trial instead of entering judgment in Defendant's favor, entered on the _____ day of _____, 19___. (felony and gross misdemeanor cases only);

_____ Sentence imposed on the _____ day of _____, 19___. (felony cases only).

_____ Order denying in whole or in part a petition for postconviction relief under Minn. Stat. Ch. 590 entered on the _____ day _____, 19____.

Dated:_____

_____
(Attorney for Defendent)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 34
NOTICE OF APPEAL BY PROSECUTING ATTORNEY TO THE COURT OF APPEALS FROM PRETRIAL ORDER(S) OF THE DISTRICT COURT

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT

_____ JUDICIAL DISTRICT

_____, Plaintiff,
vs.
_____, Defendant.

NOTICE OF APPEAL BY PROSECUTING ATTORNEY TO THE COURT OF APPEALS FROM PRE-TRIAL ORDER(S) OF THE DISTRICT COURT
District Court File No.:_____

TO: Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Clerk of District Court
Address:_____
Telephone No.:_____

State Attorney General
Address:_____
Telephone No.:_____

Attorney for Defendant
Address:_____
Telephone No.:_____

State Public Defender
95 Law Center
University of Minnesota
Minneapolis, MN 55455

PLEASE TAKE NOTICE that the prosecuting attorney in the above-entitled case hereby appeals to the Court of Appeals of the State of Minnesota from the following pre-trial order(s) of the above-named District Court entered on the following dates:

_____ day of _____, 19 . (Description of Order)
_____ day of _____, 19 . (Description of Order)
_____ day of _____, 19 . (Description of Order)

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 35
NOTICE OF CROSS-APPEAL TO
COURT OF APPEALS BY DEFENDANT
UPON APPEAL BY THE STATE

STATE OF MINNESOTA
IN COURT OF APPEALS

_____, Plaintiff-Appellant.	NOTICE OF CROSS-APPEAL TO COURT OF APPEALS BY DEFENDANT UPON APPEAL BY THE STATE
vs.	
_____, Defendant-Respondent)	District Court File No.:_____ Court of Appeals File No.:____

TO: Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

State Attorney General
Address:_____
Telephone No.:_____

Clerk of District Court
Address:_____
Telephone No.:_____

Prosecuting Attorney
Address:_____
Telephone No.:_____

PLEASE TAKE NOTICE that the above-named Defendant hereby cross-appeals to the Court of Appeals of the State of Minnesota, upon the appeal of the prosecuting attorney filed on the ____ day of _____, 19 , from the following pre-trial order(s) of the above-named District Court entered on the following date(s):

_____ Pretrial order entered on the _____ day of _____, 19___. (Description of Order)

_____ Pretrial order entered on the _____ day of _____, 19___. (Description of Order)

_____ Order granting the Defendant postconviction relief under Minn. Stat. Ch. 590 entered on the _____ day of _____, 19___. (Description of Order)

Dated:_____

_____
(Attorney for Defendant)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 36
PETITION FOR REVIEW OF
DECISION OF THE COURT OF APPEALS

STATE OF MINNESOTA
IN SUPREME COURT

_____, Respondent,	)	PETITION FOR REVIEW OF DECISION OF THE COURT
vs.	)	OF APPEALS
	)	
_____, Petitioner.	)	Appellate Court Case No.:_____ Date of Filing of Court of Appeals Decision:_____

TO: The Supreme Court of the State of Minnesota:

The Petitioner, _____, requests Supreme Court review of the above-entitled decision of the Court of Appeals and in support thereof states:

1. Petitioner is represented by _____, with offices at _____, telephone number_____. Respondent is represented by, _____, State Attorney General with offices at _____, telephone number _____ and by _____, the County Attorney for _____ County, with offices at _____, telephone number_____.

2. The decision of the Court of Appeals of which Petitioner seeks review was filed on _____. The appeal to the Court of Appeals was from (describe matter initially appealed) of the _____ County District Court involving the offense of _____ in violation of Minn. Stat. § _____ entered on _____.

3. The legal issue presented for review and the decision on those issues in the Court of Appeals are as follows:

4. The procedural history of this case is as follows:

5. The facts which give rise to this request for discretionary review are as follows:

6. The reasons why the Supreme Court should exercise its discretion to review this case are as follows:

7. An appendix containing the written decision of the Court of Appeals and the trial court's Findings of Fact, Conclusions of Law, and Memorandum is attached.

Dated: _____

_____
(Attorney for Petitioner)
Name:
(Attorney License No.:
Title:
Address:
Telephone No.:

FORM 37
WAIVER OF COUNSEL
ON DIRECT APPEAL

STATE OF MINNESOTA
IN COURT OF APPEALS (SUPREME COURT)

_____, Respondent, vs. _____, Appellant.	WAIVER OF COUNSEL ON APPEAL D. C. File No. Appellate Court File No.

TO THE ABOVE-NAMED COURT:

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

1. My full name is _____. I am ____ years old, my date of birth is _____. I certify I am able to read, write and understand the English language.

2. I have been convicted of _____ _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 19___.

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

_____

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

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

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

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

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

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

8. I understand that all existing legal issues with respect to my present conviction and/or sentence must be raised by me in

this court proceeding or they will be waived for the purpose of any further state or federal court proceedings.

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

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

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

12. I understand that in waiving assistance of the State Public Defender on appeal, I am certifying that I am competent to make this decision, that I am not under the influence of any drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself on appeal, and I understand that if I did not waive counsel, the State Public

Defender would be appointed to represent me on appeal.

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

Dated: _____

Appellant

Subscribed and sworn to before me
this _____ day of _____.

_____
Notary Public

FORM 38
WAIVER OF COUNSEL ON
POST-CONVICTION PROCEEDINGS

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF _____ — _____ JUDICIAL DISTRICT

_____, Respondent,	WAIVER OF COUNSEL ON POST-CONVICTION PROCEEDINGS
vs.	D. C. File No.
_____, Petitioner.	

TO THE ABOVE-NAMED COURT:

I, _____, petitioner in the above-entitled case, represent and state as follows:

1. My full name is _____. I am ____ years old, my date of birth is _____. I certify I am able to read, write and understand the English language.

2. I have been convicted of _____ _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 19___.

3. I understand that I have the right to challenge my conviction by filing a post-conviction petition in the district court where I was convicted and sentenced and that because I am

_____

indigent I have the right to be represented by the State Public Defender.

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

I further understand that I will have to do the necessary legal work on my post-conviction by myself. This includes filing my post-conviction petition in the district court where I was convicted and sentenced within 60 days after I receive my trial transcript, complying with any district court requirements regarding the format of my petition, and properly serving my petition on the appropriate parties. I understand that the State Public Defender will not be available to answer any questions I have in this regard, nor can I expect the Clerk of District Court to answer any such questions. I acknowledge that the Supreme

Court has said that I will be held to the same standard of responsibility as a licensed attorney. I understand that I may not later claim that because I made mistakes while representing myself in my post-conviction action that I am entitled to a new post-conviction action.

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

6. I understand that a copy of the transcript will be made available to me by the State Public Defender. I agree to return the entire transcript in an undamaged condition to the State Public Defender within 60 days after receiving it. Failure to return the transcript, which is state property, is a violation of Rule 19 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system. Any destruction, damage or alteration of the transcript is a violation of Rule 27 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system.

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

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

8. I understand that all existing legal issues with respect

to my present conviction and/or sentence must be raised by me in my post-conviction petition or they will be waived for the purpose of any further state or federal court proceedings.

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

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

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

12. I understand that in waiving assistance of the State Public Defender in my post-conviction action or on any appeal I may choose to file should my petition be denied, I am certifying that I am competent to make this decision, that I am not under

the influence of any drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me in my post-conviction action.

13. I understand that by alleging ineffective assistance of trial counsel in my post-conviction petition, I waive the attorney/client privilege to the extent necessary to establish this claim. I understand the my trial attorney will be permitted to respond to my specific allegations of ineffective assistance either by testifying or by submitting an affidavit to the Court. I understand that in responding to my allegations, my trial attorney will be permitted to reveal confidential information I disclosed to my trial attorney during the course of our relationship, which relates to my claim of ineffective representation.

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

Dated:

_____
Petitioner

Subscribed and sworn to before me this ____ day of _____.

_____
Notary Public

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

STATE OF MINNESOTA
IN COURT OF APPEALS (SUPREME COURT)

_____, Respondent, vs. _____, Appellant.	REQUEST FOR DETERMINATION OF COMPETENCY TO PROCEED PRO SE ON APPEAL D. C. File No. Appellate Court File No.

TO THE ABOVE-NAMED COURT:

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

1. My full name is _____. I am ____ years old, my date of birth is _____.

2. I have been convicted of _____ _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 19___.

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

4. Notwithstanding my right to be represented on appeal by the State Public Defender, I wish to waive that right and

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

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

5. I certify that I do not have the funds to pay for the necessary transcripts and I acknowledge that the Court will have

access to any information regarding my finances.

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

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

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

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

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

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

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

12. I understand that in waiving assistance of the State Public Defender on appeal, I am certifying that I am competent to make this decision, that I am not under the influence of any drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself on appeal, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me on appeal.

13. I understand that the Supreme Court has said that I will

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

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

Dated: _____

Appellant

Subscribed and sworn to before me
this _____ day of _____.

_____
Notary Public

FORM 40
RECEIPT OF TRANSCRIPT
BY APPELLANT

STATE OF MINNESOTA
IN COURT OF APPEALS (SUPREME COURT)

_____,	)	
	)	
Respondent,	)	RECEIPT OF TRANSCRIPT BY
	)	APPELLANT
vs.	)	
	)	D.C. File No.
_____,	)	Appellate Court File No.
	)	
Appellant.	)	

I, _____, acknowledge that I have received from the State Public Defender the _____ page transcript of the trial of State of Minnesota v. _____ _____ and the transcripts of _____ _____ proceedings.

I understand that the Supreme Court has said that the transcripts are state property and that the Supreme Court has also said that I must return them to the State Public Defender in an undamaged and complete condition before the appellate brief I have prepared will be accepted for filing by the Court of Appeals (Supreme Court). I understand that when I return the transcript to the State Public Defender, I will be given a return receipt and that the State Public Defender will file a duplicate receipt with the Court of Appeals (Supreme Court). I acknowledge that the pro se brief I have prepared will not be accepted for filing unless and until the State Public Defender files such a receipt with the appellate court.

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

I agree to the above conditions and agree to return the transcript in an undamaged and complete condition to the State Public Defender on or before _____.

Dated:

_____
Appellant

FORM 41
CERTIFICATE OF RECEIPT OF
TRANSCRIPT FROM APPELLANT

STATE OF MINNESOTA

IN COURT OF APPEALS (SUPREME COURT)

_____, Respondent, vs. _____, Appellant.	CERTIFICATE OF RECEIPT OF TRANSCRIPT FROM APPELLANT D.C. File No. Appellate Court File No.

This is to certify that _____, Assistant State Public Defender, has received the _____ page transcript of the trial of State of Minnesota v. _____ _____ and the transcript of the _____ _____ proceedings from _____ _____, the appellant in the above-entitled case.

This is to further certify that the transcripts were returned to the Office of the State Public Defender in a complete and undamaged condition.

A copy of this certificate of receipt was left with the appellant.

Dated:

_____
Assistant State Public Defender

_____
Appellant

Subscribed and sworn to before
me this _____ day of _____.

_____
Notary Public

FORM 42
DISMISSAL OF COMPLAINT BY PROSECUTING ATTORNEY, PURSUANT TO RULE 30.01

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF _____		_____ JUDICIAL DISTRICT
_____, Plaintiff,	)	DISMISSAL OF COMPLAINT,
vs.	)	BY PROSECUTING AUTHORITY, PURSUANT TO RULE 30.01
_____, Defendant.	)	District Court File No.__

The Prosecuting Attorney hereby dismisses the Complaint in the above-named case for the following reasons:

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

FORM 43
STATE DISMISSAL OF INDICTMENT
PURSUANT TO RULE 30.01

STATE OF MINNESOTA

COUNTY OF _____

DISTRICT COURT

_____ JUDICIAL DISTRICT

_____,
Plaintiff,

vs.

_____,
Defendant.

STATE DISMISSAL OF INDICTMENT, PURSUANT TO RULE 30.01

District Court File No.__

The State of Minnesota, with leave of this Court, hereby dismisses the Indictment in the above-named case for the following reasons:

Dated:_____

_____
(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.:

APPROVED BY:

_____
Judge of District Court