REPORT AND PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

CX-84-2137

December 8, 2010

Hon. Mark Wernick, Current Chair
Hon. Robert Carolan, Former Chair

Helen Brosnahan
Frederic Bruno
Ben Butler
Leonardo Castro (former member)
Scott Christenson
Brad Delapena
Matthew Frank
Prof. Richard Frase
Katrina Joseph
Michael Junge
Hon. Michael Kirk (former member)
Daniel Lew
Prof. Robin Magee
Mark Nyvold (former member)
Heidi Schultz
Thomas Sieben
Hon. Jeffrey Thompson
Hon. Robert Tiffany
Paul Young

Hon. Paul H. Anderson
Supreme Court Liaison

Karen Kampa Jaszewski
Kelly Lyn Mitchell
Staff Attorneys

INTRODUCTION

As directed by the Supreme Court, the Advisory Committee on Rules of Criminal Procedure has met regularly and continued to monitor and to hear and accept comments concerning the Rules of Criminal Procedure. The following report summarizes the issues considered by the committee and the recommended changes to the Criminal Rules of Procedure. The report narrative is organized by topic and the proposed amendments are organized by rule number.

APPEALS FROM DISMISSALS IN THE INTERESTS OF JUSTICE

In *State v. Hart*, 723 N.W.2d 254 (Minn. 2006), the Supreme Court referred to the Committee two issues for consideration: (1) whether amendments to Rule 28.04 are necessary to address the tension between the district court's authority to dismiss a complaint in the interests of justice and the prosecutor's right to refile the complaint; and (2) whether the notice procedures in Rule 28.04 should apply when the state petitions for an extraordinary writ in a criminal case. With regard to the first issue, the committee recognized that in some cases, if there is strong disagreement between the prosecutor and the judge as to whether certain charges are appropriate, a cycle may ensue wherein the complaint is filed, dismissed, and then refiled. The committee reasoned that if a procedure were developed to give the prosecutor the right to appeal the court's decision, that procedure would only be effective at ending the cycle if an affirmance of the district court's decision resulted in preventing the prosecutor from refiling the complaint. However, the committee was concerned that in some cases, new evidence might come to light after the appeal that would provide the necessary probable cause for the charges, and that possibility made the appeal proposal unpalatable. Thus, the committee determined that the extraordinary writ process as it exists now provides an adequate remedy for the prosecution when a case is dismissed in the interests of justice. With regard to the second issue, given that the remedy sought would be an extraordinary writ, the committee suggested that the Civil Appellate Rules be amended to require service upon the State Public Defender when extraordinary writs are filed in criminal cases. The Committee did not think an amendment to Rule 28.04 would be necessary because the writ procedure is outside of the Rules of Criminal Procedure. The suggested amendment to the Civil Appellate Rules was communicated to the advisory committee for those rules, and Minn. R. Civ. App. P. 120 has since been amended accordingly.

SPECIFIC INSTANCES OF CONDUCT NOTICE

In *State v. Fields*, 730 N.W.2d 777 (Minn. 2007), the Supreme Court referred to the Committee the task of studying and making recommendations for procedures to require the prosecutor to notify the defendant or defense counsel in writing of the intent to cross-examine the defendant or a defense witness of specific instances of conduct under Minnesota Rule of Evidence 608(b). Prosecutorial evidentiary notices are governed by Rule 7. In reviewing the Rule, the Committee determined that an additional notice could best be worked into Rule 7.02, which addresses notice of evidence under Minn. R. Evid. 404(b) (i.e., *Spriegl)*. However, because there is an exception to this existing notice for offenses or acts that have already been prosecuted, the Committee determined that the rule should be rearranged a bit for better flow and readability. The result is proposed Rule 7.02, which addresses notice of Rule 404(b) evidence in subdivision 1, notice of Rule 608(b) evidence in subdivision 2, content of the notices in subdivision 3, and timing of the notices in subdivision 4. The rule now also specifically

references the citations for the applicable Rules of Evidence and mirrors the terms used in those rules so there can be no confusion as to the type of evidence for which the notices are required.

GRAND JURY TRANSCRIPTS

The Committee weighed in as the Advisory Committee on General Rules of Practice considered amendments to Minn. R. Gen. Prac. 707 to require that transcripts and court reporter notes from grand jury proceedings be filed with the court. The Committee, through a letter from the Chair, recommended that any such rule change include a statement about the confidentiality of the grand jury proceedings and ensure that the transcript will only be provided in accordance with Minn. R. Crim. P. 18. The Advisory Committee on General Rules of Practice filed a report and recommended amendments to Minn. R. Gen. Prac. 707, which incorporated the suggestions of this Committee. The General Rules Committee also commented in its report about the possibility of referring the entire 700 series to the Criminal Rules Committee at some point in the future. However, no specific request has been made to transfer those rules and the idea is not being actively considered. The General Rule of Practice relating to grand jury transcripts became effective January 1, 2010.

VOLUNTARY DISMISSAL OF APPEAL

The Committee considered a proposal to provide for voluntary dismissal of an appeal. Currently the Civil Appellate rules control and under those rules both parties must stipulate to dismissal. However, there is only one appellant in a criminal case and therefore no need to get the other party to agree to the dismissal of an appeal. Because the State has to file its own appeal, the State's case would be unaffected if defendants are allowed to voluntarily dismiss their own appeals. The Committee discussed whether there should be a time limit to avoid unnecessary travel or preparation, but ultimately agreed that a dismissal by the defendant would be appropriate at any point as long as the court consents. The Committee likened this to the prosecutor's authority to dismiss under Rule 30.01 in that the appellant should be able to choose whether to proceed or not. It was noted that it is impractical to force a defendant to continue an appeal. The Committee agreed such a rule was a good idea but questioned whether there should be proof the client consents in order to preempt later ineffective assistance of counsel claims or *Knaffla* issues. Ultimately the Committee agreed that the attorney should be responsible for keeping the record necessary to address an ineffective assistance of counsel claim, and that a signed consent to dismiss would not be required because it would not prevent an attorney from filing a fraudulently signed consent. The Committee discussed and confirmed that cross petitions for review are individually granted and would be unaffected by a voluntary dismissal. Finally, the Committee conceded that under the proposed rule, an appellant could potentially dismiss and re-file, but concluded that the proposed rule was still a positive change that would save time. Because granting the dismissal would be discretionary with the court, the Committee was comfortable that any extraordinary circumstances would be addressed appropriately by the court. The Committee agreed to the proposed addition of Rule 28.06, providing for voluntary dismissal, as well as proposed amendments to Rules 28.04, 29.03 and 29.04.

JURY SEQUESTRATION

The Criminal Justice Forum requested that the Committee consider a proposal to allow the court the discretion to determine whether the jury may separate overnight rather than requiring both parties to consent to separation as required by the current Rule 26.03. The

Committee discussed the fact that under case law, the court has the discretion to overrule a party's objection to overnight separation, so it is logical to conform the rule to case law. The Committee also noted that jurors take their charge seriously and that keeping jurors together under stress (for example, late into the evening to avoid hotel costs) does not improve the outcome. The Committee also discussed whether jurors being forced to congregate in common hallways at court, or being confined together in hotels with out-of-town attorneys, was worse for the process than letting jurors separate overnight. The Committee also discussed the fact that if a defendant asks for separation and the prosecutor objects, under the current rule the court would be required to sequester the jury overnight. Changing the rule would place resolution of the issue within the judge's discretion, rather than in the hands of one party who may be engaging in misconduct.

The Committee considered amending the rule to explicitly require the court to admonish the jury on the record before allowing them to separate overnight. The Committee also discussed adding proposed language for the judge to use when admonishing the jury. However, after much consideration the Committee determined that including such language in the criminal rule could cause confusion as to whether it is appealable error to fail to give the exact instruction. Also, the Committee agreed that the drafting of such language was better left to the Minnesota Jury Instruction Guide Committee. Thus the Committee opted to not include such language in the proposed rule change, but recommends that the Minnesota Jury Instruction Guide Committee consider drafting a jury instruction to be used under the circumstances described throughout Rule 26.03.

JURY REVIEW OF AUDIO AND VIDEO EVIDENCE

In *State v. Wembley*, 728 N.W.2d 243, 245 n. 1 (Minn. 2007), the Supreme Court referred to the Committee the issue of whether additional safeguards were needed when a jury requests to review audio and video evidence. Currently the court must determine on a case-by-case basis how to respond to such requests. A rule would provide guidance and give the court control over how much time the jury is permitted to review the evidence. The Committee discussed whether there should be any difference in how the rule treats audio or video containing oral statements and video with no sound. For each of these types of evidence, the committee was concerned that if the jury is permitted to review the audio or video evidence without being monitored there is a risk that a jury could repeatedly play a particular portion of the audio or video tape, thereby placing too much emphasis on that particular portion. The committee determined that audio or video containing statements is more like testimony and audio or video without statements is more like a photo. Juries already have unlimited opportunity to look at photos entered in evidence, but they do not have unlimited access to review statements. Thus there is a difference and the rule should treat audio and video containing statements differently. Since more control is needed regarding oral statements, review must be done in front of a judge, but parties should have the option to waive their presence. Because this is a stage of trial, the defendant has the right to be personally present, and must personally waive that right, and existing law adequately covers that issue. The Committee also discussed whether the judge must order the jury to suspend deliberations during the review, or whether the judge should stay silent on the issue. After much discussion, the Committee approved a proposed rule that addresses all audio and video, prescribes who must be present and who can waive their presence, and requires that the judge order the jury to suspend deliberations during review.

FAX FILING

The Committee discussed a request from the State Court Administrator's Office to clarify whether a fax filing fee applies in criminal cases. According to the request, some court administrators were reading Minn. R. Crim. P. 33.05, as amended July 1, 2008, as eliminating the need for clients not represented by the public defender to pay a fax filing fee. Others were reading Minn. R. Crim. P. 33.04, as amended July 1, 2008, which requires filing "as in civil actions" to require a fax filing fee as is required in Minn. R. Civ. P. 5.05. Further support for the latter position is found in the comments to Rule 33.04, which specifically reference Minn. R. Civ. P. 5.05. After a brief discussion of the 2008 amendments and the intent of the rules, the Committee agreed that no fax filing fee should be charged in criminal cases and approved changes to Rules 33.04 and 33.05 to clarify this.

TRANSCRIPTS REQUIRED ON APPEAL

The State Public Defender's Office presented a proposal that one fewer transcript be required on appeal, and that the State Public Defender's Office only be responsible for paying for a transcript if a defendant is eligible for public defender services based on all eligibility criteria. The purpose of the proposal is to address a cost issue, as transcripts remain a high cost for the public defender's office each year. The specific proposal is to eliminate one of the copies from the requirement to order transcripts, which would be accomplished with an amendment to Rule 28.02, subd. 9. The Committee discussed the transcript issue in the context of private counsel cases, noting that case law holds that an indigent appellant who has private counsel on appeal has the right to receive a transcript at public expense. While that is logical if the public defender may have represented that defendant anyway, it is illogical for cases outside of the public defender's responsibility, namely misdemeanors and petty misdemeanors. Thus to really effect cost savings for the public defender's office, a change must be made to the language in the eligibility provisions contained in Rule 28.02, subd. 5. As currently written, if a "defendant qualifies financially," the public defender pays for the transcript. But that provision does not address whether the defendant is otherwise eligible; it only requires financial eligibility. Thus the proposal also includes a recommendation that the word "financially" be eliminated, which will result in the public defender only paying for the transcript if the defendant qualifies for public defender services based on all relevant criteria, not just financial eligibility.

The Committee discussed at length whether there was any other critical need for the copy that would be eliminated by this proposed rule change. Specifically, the Committee acknowledged that court reporters expressed opposition to the proposal, and that without an extra copy, the original transcript would need to remain with the court file and there would be no transcript available to send to the State Law Library as required by Minn. R. Civ. App. P. 111.04. The Committee agreed that as long as the original transcript remained with the court file and was thus accessible to the public at the district court, the lack of a transcript at the State Law Library was not a compelling reason to reject this proposal, which will result in significant cost savings for the public defender's office. Nonetheless, the Committee felt strongly that it was important to give the State Law Library and the Historical Society notice of this proposed rule change and seek their input, which was done by letter from the Chair. The State Law Library responded to the Committee, and acknowledged that to some extent the lack of a transcript for the library has been the reality for quite some time. Apparently there has not been consistent compliance with

the requirement that the extra copy be ordered, which has resulted often in the original transcript being returned to the district court and no transcript being filed with the State Law Library. The Committee also discussed the fact that there is a records retention schedule in place in the district court that provides some predictability for access to the transcript contained in the court file, and that there is a process for preserving court files in landmark cases. Having given significant consideration to the effects of this proposed rule change, the Committee was satisfied that the public's ability to access transcripts would not be significantly impaired by the change. The Committee also agreed that the rule change was overall a positive change because of the savings that would be realized by the financially strapped public defender's office.

RULE 11.07 TIMELINE FOR JUDICIAL DECISION

The Committee received a number of questions about the timing change in Rule 11.07. Specifically, questions were raised as to why the timeline for judicial decision was reduced from 30 days under the former rule, to 7 days under the current rule. The Committee responded to those concerns noting that while the timeline under the new rule may appear to be a reduction in the time allowed, it is actually an extension in the time allowed. The difference is the triggering event for the findings. Under the prior rules, the omnibus hearing was to be held within 28 days of the rule 8 hearing. And the findings on omnibus issues were due within 30 days of the rule 8 hearing. Because the omnibus hearing was to be held 28 days after the rule 8 hearing, and the findings were due 30 days after the rule 8 hearing, the findings were actually due 2 days after the omnibus hearing. Thus the new rule results in an extension of time from 2 days to 7 days.

Questions were also raised as to whether the 7 days can be waived or extended and, if so, under what circumstances. While the rules are not specific on this issue, the Committee agreed that the hearing is not concluded if the record is left open for a specified number of days for attorney submissions. Under those circumstances, the hearing is essentially continued during that time and the counting of days for issuing findings does not begin until the submissions are received and/or the record is closed. *See* Minn. R. Crim. P. 11.06 ("The court may continue the hearing or any part of the hearing for good cause related to the case.") and comments.

The Committee discussed the possibility that, if the main concern of the timeline is avoiding a violation of the speedy trial right, there could be a 2-track system, with in-custody cases on one timeline and out-of-custody cases on another. However, the Committee concluded that this would be confusing for the court staff who must monitor these cases, and a defendant's custody status can change at any time, making a 2-track system an unsatisfactory solution. The Committee also considered the possibility that the criticism of the amended timeline is due in part to the fact that the previous timeline was not universally followed. And the rule is silent as to sanctions for failure to comply. However, the appeals process has addressed and will continue to address cases where delay results in a violation of the speedy trial right. And although there have been questions raised, the timeline was thoroughly considered before the rule change was recommended and nothing has changed since the Committee made this decision to warrant reconsideration at this time. While the Committee strives to be flexible and responsive to the bench and bar, there is also a need for timelines and finality in decision-making. Thus the Committee declines to actively reconsider the issue at this time. However, the Committee will continue to monitor this issue and if needed, the issue may be reconsidered in the future.

UPDATE OF RULE 15 PLEA PETITION

At the request of practitioners, the Committee also devoted time to the review and update of the Rule 15 plea petition. However, any attempt to streamline, clarify or shorten the petition proved unsuccessful because of the complexity of the form, the large amount of substantive information contained in the form, and confusion over what the core purpose of the form truly is. The Committee questioned whether the guilty plea procedure, rather than the petition form, should be relied on to ensure an adequate guilty plea and waiver of rights. It was noted that most defendants appear to shut down after the first couple pages, so the goal initially was to reduce the document to 2 pages. But significantly reducing the size of the document, which necessarily results in a loss of content, has proven problematic. Members questioned, for example, whether the co-signing of the attorney was necessary, especially since Rule 15 petitions may be mailed in for misdemeanor cases and often the defendants have no attorney. In the attempt to shorten the form, a proposed petition form was considered, which had a number of paragraphs removed including the statements regarding right to appeal, education, and emotional health. The Committee engaged in lengthy debates regarding each of these sections of the petition.

Generally speaking, prosecutor members did not object to shortening the petition because they have to review the same information on the record and would still need to rely on a transcript if there were a challenge to the plea. And defense attorney members noted that despite what the defendants appear to agree to when signing the petition, defense counsel are still presented with defendants citing either mental illness, impairment by drugs or alcohol, or the simple desire to get out of jail as the real reason for signing the petition.

Because transcripts are harder to come by and digital recordings can have voiceover issues that make it difficult to hear exactly what was said, the Committee agreed that a signed plea petition is the next best source for the record. But the size of court calendars today makes true compliance with Rule 15 virtually impossible. In light of those realities, members discussed the various functions of the petition and which of those functions must take priority. Specifically, members discussed whether the main function is to inform the defendant of what is occurring, to make a record for future use, or something else. Members also questioned how other states are handling these issues and whether there is a model for how to capture a plea in the digital age. The Committee discussed whether it is even possible to create a petition that will address every individual case and what the goal of the petition should be as we move forward. The Committee agreed that at a minimum the form should contain the full waiver of counsel requirements of Rule 5.04. Members also agreed that to make the form manageable, there must be separate forms for misdemeanors and gross misdemeanors/felonies.

In sum, if the purpose of the petition is to make a record in lieu of transcripts, then the longer form should be retained; if that is not the purpose, then a shorter form would be preferable. Members discussed the fact that if the petition form is to be a replacement for the oral record, attorneys would need to be educated about that. Also, members were concerned about whether the appellate bench needs to be made more aware of how the size of court calendars is affecting the ability to get through the full Rule 15 process in each and every case. The Committee conceded that plea and waiver is much more thorough in federal court, but there is much more time to do so in federal court as there are fewer pleas.

Members agreed that the competency section must be addressed in person on the record so that section on the petition could be removed. It was also suggested that the sections regarding constitutional rights and appeal are critical and must be retained. The Committee considered whether all that is needed beyond that section is a checklist that the average citizen can understand. However, in light of all the concerns raised during the discussion, the Committee concluded that a revision of the petition form cannot be undertaken without further direction from the Supreme Court regarding the purpose of the petition. Thus the Committee seeks direction from the Court as to the core purpose of the petition and how to best address requests to update and revise the document for use in today's courtroom.

ATTORNEY-ISSUED SUBPOENAS

The Committee received a request from a practitioner in both civil and criminal cases to consider giving attorneys in criminal cases the option to self-issue a subpoena. On looking into this request, the Committee learned that attorneys in civil cases in Minnesota and in federal court, and attorneys in criminal cases in North and South Dakota, can self-issue a subpoena. The Committee therefore has drafted a proposal to allow attorneys in criminal cases to self-issue subpoenas.

The Committee's initial main concern was the potential for abuse of subpoenas if an attorney can self-issue them. However, currently the courts do not monitor attorney use of subpoenas, so if an attorney wants to misuse a subpoena, no direct obstacle exists to doing that. Attorneys are of course subject to professional discipline for their conduct, but since there do not seem to be problems with attorneys misusing subpoenas issued to them by court staff, it seems safe and reasonable to allow attorneys to self-issue them in criminal cases, as Minnesota attorneys in state and federal civil cases are already permitted to do. The revised language allowing attorneys to self-issue requires sufficient information identifying the issuing attorney, so that an attorney who abuses the privilege to self-issue can be readily identified. It also requires that the attorney personally sign a completed subpoena, which means that all required information has been filled in. This will help ensure that the attorney is personally accountable for the subpoena's use, and will not be able to claim that he or she was not aware of how it would be used.

The Committee recognizes that the ability to self-issue a subpoena in a criminal case will result in significant benefits to both prosecutors and defense attorneys because it will save time and expense, and facilitate issuance when witnesses are located shortly before or during trial. The ability to do this could have enormous benefits for the fairness and reliability of trials by ensuring that all necessary witnesses have been obtained. Court administration will also benefit by the reduced time needed to respond to subpoena requests.

Members discussed whether someone would question whether the subpoena is legitimate without a court seal, and whether there is any widespread disobedience in civil cases. Some members of the Committee observed that compliance with subpoenas in criminal cases can be problematic even though subpoenas have a court seal. But this may be attributable to a general reluctance to be a witness in a particular case, so the presence or non-presence of a seal is not likely to affect compliance. The form subpoena that attorneys self-issue in civil cases, and which is available on the Minnesota Judicial Branch website, allows the self-issuing attorney to indicate

in the space where a seal would otherwise appear that no seal is required because the subpoena is being self-issued. Adoption of a form subpoena to implement the proposed language discussed here could similarly indicate why no seal is required. If an attorney in a criminal case believes the required witnesses would be more reluctant to respond to a subpoena without a court seal, and desires more formality, the attorney may simply obtain a subpoena from the court bearing a court seal, which remains an option under the proposed language.

Members also discussed whether such a change was fair to pro se litigants, who under Rule 22.01 may only obtain a subpoena by court order. The Committee agreed that there is ample reason to treat pro se parties differently, especially because they are not officers of the court and the court does not have the same enforcement options available for abuses of process.

Ultimately the Committee determined that even considering the worst case scenarios, this proposal seems a logical, safe change, and that adding a trip to the courthouse to obtain a seal did not add any protection against attorney abuse of process.

The Committee then addressed the use of subpoenas for discovery. While most documents in criminal cases are obtained through Rule 9, there is still some use of subpoenas for discovery purposes. And although there is concern about abuse of process, case law provides that discovery procedures available to the defendant include the use of subpoenas. Thus, the proposed rule is clear that subpoenas can be used just to obtain documents. However, the Committee was concerned about whether the rules should specifically address the use of subpoenas to obtain medical and other confidential records. The Committee discussed the applicable case law and considered whether the comments to the rule should reference the case law requirement of in camera review, whether the requirement should be included in the rules, and whether a threshold showing should be required prior to subpoenaing the documents. A subcommittee including prosecutors and defense attorneys was created to consider whether or not a rule should be proposed to address the use of subpoenas to obtain confidential documents.

It was generally agreed that records, including confidential ones, created in direct response to the alleged offense that has given rise to the criminal prosecution are readily available, and that this issue of obtaining confidential records arises mainly when there are past incidents involving the victim or family members. The goal is to prevent abuse of subpoenas without limiting their legitimate use. However, in considering the issue, the subcommittee struggled with 1) how to craft a rule that would allow parties to obtain helpful documents when they may not know exactly what those documents are; and 2) how to honor the confidentiality of mandatory reporters and victims. The subcommittee also struggled with addressing what the court should do with such documents when they are received, especially if the court thinks the documents are inadmissible.

After much consideration, the subcommittee concluded that: 1) there has not been a significant problem identified that would necessitate the creation of a rule or amendment of the current rules; 2) the proposed changes to Rule 22 authorizing attorney-issued subpoenas will not create any new or different problems as relates to confidential documents that would necessitate a new rule; and 3) existing case law provides remedies for any potential issues related to obtaining/disclosure of confidential documents. The subcommittee noted that it was the proposal

to allow attorney-issued subpoenas that led to the discussion about potential abuse of subpoenas to obtain confidential records. But in recommending that attorneys be allowed to self-issue subpoenas, the Committee was satisfied that the potential for attorneys to misuse subpoenas would be no greater than it is when the subpoenas are obtained from court administration. Rather than further revising Rule 22 to impose limits on the use of subpoenas to obtain confidential documents, which proved very difficult and problematic, the subcommittee recommended that any guidelines or limitations on the use of subpoenas in this manner should be left to case law and the court process. Based on the subcommittee's recommendation, the Committee agreed that no further action will be taken on this issue.

The proposal consolidates subpoenas for the attendance of a witness and production of documents into Rule 22.01, and the proposed Rule 22.02 addresses the form and content of subpoenas. Other changes recommended in the revision to Rule 22 include a direct reference to Minn. Stat. § 634.07, which governs out-of-state witnesses, and a change to the structure of the rule that clarifies that the motion to quash provision applies to both subpoenas for the attendance of witnesses and subpoenas for the production of documents. The Committee considered whether there should be an option allowing a party not to appear in response to a subpoena duces tecum, but opted to table that issue as not requiring immediate action. Because the subpoena form is already provided on the court's website, if this rule is promulgated, all that would be needed is a minor language change to the bottom of the form subpoena where it states that a seal is needed. Attorneys could then download the form from the court's website. This process seems to be working in civil cases, and again, takes some pressure off court administration staff.

UNIFORM CITATION

The Committee was also asked to advise the Court as to how the Minnesota Rules of Criminal Procedure could be amended to mandate the use of a statewide uniform citation. Under the current statutory scheme, the form of the uniform traffic ticket is determined by the Commissioner of Public Safety. But this authority is limited to the form of the citation issued for traffic offenses under Chapter 169, does not bind law enforcement in cities of the first class, Minn. Stat. § 169.99, subd. 3, and does not extend to criminal or Department of Natural Resources (DNR) offenses charged under other chapters. The proposed amendments to Rule 6.01 mandate use of the uniform citation, include a specific reference to the statutes addressing failure to appear in petty misdemeanor cases, and recognize the electronic form of the citation. Due to the time-sensitive nature of this request, the Committee filed a letter report with the Supreme Court on this topic earlier this year.

JURY PANEL LIST

A request was made by the Jury Management Resource Team (JMRT) to clarify court staff's obligation to provide juror information to parties. The JMRT is an advisory group to the State Court Administrator and is composed of jury managers from around the state. Prior to the January 1 stylistic change to the rules, Rule 26.02 required court administration staff to provide jury panel information upon request, but the newly amended Rule 26.02 requires court staff to provide prospective juror information without need for a request. The change from the phrase "jury panel" to "prospective juror" is significant in that the prospective juror pool is very large and contains all individuals whose names have been drawn for jury service, but who may never actually be sent to a courtroom for voir dire. The "jury panel" is more specific and refers only to

those jurors sent to the courtroom for voir dire. Since the rule change took effect, jury managers from around the state have been asked by attorneys to provide much more information than in the past and it is becoming very time consuming and costly.

Committee members who served on the revision subcommittee noted that there was no intention to make a substantive change to Rule 26.02 and that the changes to the process identified by JMRT were inadvertent. The Committee therefore recommends returning the phrase "upon request" to the rule, and reverting to use of the term "jury panel" rather than the term "prospective juror." JMRT also requested that the word "demographic" be inserted in the rule to describe the jury panel information that must be provided to parties. However, the Committee was concerned that such a change went beyond restoring the rule to its pre-January 1 language, and constituted a substantive change. The Committee was also concerned that the word "demographic" is not easily defined. The Committee also agreed that use of the term "address" is misleading since full address is not actually provided; instead, the city as reported on the juror questionnaire is provided.

The Committee determined that the better approach was to list specifically in the rule the information that is routinely provided to attorneys by court staff for purposes of voir dire. This information is provided in a document called the Juror Profile list and it includes each juror's: name, city, occupation, education, children's ages, spouse's occupation, birth date, race and whether or not of Hispanic origin, gender, and marital status. This is the information that has long been provided to attorneys for voir dire and it is not anticipated that the information provided will change at any point in the near future. The Committee acknowledges that at times attorneys need additional juror information, but those requests are covered by Minn. R. Gen. Prac. 814(b). The issue for the Rules of Criminal Procedure is not what parties might want or be entitled to under the General Rules of Practice, but what court staff must provide to parties for voir dire. Thus the Committee recommends that the rule be as specific and accurate as possible. By listing the exact data elements that are currently and have long been provided to parties for voir dire, the rule will eliminate the confusion and disagreement regarding what court staff must provide at this stage, which will save court staff time and effort.

GROSS MISDEMEANOR PROCEDURES

The Committee considered an issue referred by the Supreme Court in its June 9, 2010 order expanding the use of ITV: whether the rules should be amended to include a procedure and form to permit the submission of a written plea petition in gross misdemeanor cases without personal appearance. The Committee was in favor of such a change, but was concerned whether the change was prohibited by *State v. Rubin*, 409 N.W.2d 504 (Minn. 1987), which held that a plea in a gross misdemeanor case requires consultation with counsel prior to the plea or it will be subject to collateral attack. The Committee concluded that the case was decided based on the requirements of Rule 5.02 rather than a constitutional requirement. Thus the Committee determined that a plea by mail was not prohibited by constitutional law or case law, and that it was appropriate to alter the gross misdemeanor plea process by amending the rules. The Committee proposes an amendment to Rule 15.03 that would allow for written guilty pleas in gross misdemeanor cases without need for personal appearance.

The Committee considered whether any other rules besides Rule 15.03 would need to be amended to allow this procedure and whether a separate waiver of the right to counsel should be required. The Committee also considered whether this change should only be made as part of a more global change to the Rules of Criminal Procedure that would treat gross misdemeanors like misdemeanors rather than felonies at every stage in the proceedings. The Committee determined that it may not be in a position to take on a project of that magnitude at this point, but believes that the change to authorize gross misdemeanor guilty pleas by mail should move forward since this practice is already occurring in cases involving out-of-state as well as incarcerated defendants. And when it is deemed appropriate to handle cases in this manner, the rules should allow for the process, as it is much more efficient than transporting defendants to court or requiring out-of-state defendants with counsel to return to Minnesota to enter a guilty plea. However, to address the concern about collateral attack on such guilty pleas, the Committee recommends including in the rule a requirement that either the defendant have the assistance of counsel or sign a written waiver of the right to counsel.

Because the Committee recommends moving forward with only this change, and is not recommending any other changes to the processes applicable to gross misdemeanors, the form that must be used for these guilty pleas is the existing felony/gross misdemeanor guilty plea form, which contains all relevant information applicable to gross misdemeanor cases.

The Committee is mindful that this is a seminal change and that even with the statement regarding counsel in the proposed rule there is a potential for collateral attack on such guilty pleas. If the Court determines that this proposed rule cannot be reconciled with existing case law, or that the proposed change is not adequate to ensure that guilty pleas handled in this way will not be subject to collateral attack, the Committee would ask that the Court refer the matter back to the Committee with further instruction on how to best address this issue.

OTHER ISSUES

The Committee also discovered a typographical error in Rule 28.02, subd. 4(1), that needs correction; that proposal is also contained in this report.

The Committee reviewed the Minnesota Statutes to determine if any statutory amendments were needed in light of the stylistic revision of the rules. A number of statutes were identified as needing revision. A letter was sent from the Chair notifying the Legislature of the statutes needing amendment, and offering the Committee's assistance in making the statutory amendments needed to conform the statutes to the rules.

The Committee is mindful of the current budgetary and staff shortages and the Supreme Court mandate that committees meet only to address rules changes that are immediately necessary. Consequently, the Committee cut back its meeting schedule and has tabled a number of issues that are not as critical. However, case law changes and constantly emerging issues have required some steady monitoring of the Criminal Rules. And a few high profile issues, such as eCharging and ITV, have required the continued involvement of the Committee. Due to the continued budget and personnel constraints, the Committee will continue to meet less frequently and will address only those requests that have the potential to effect cost-savings and improve the efficiency of the criminal justice system.

Respectfully Submitted,

ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

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 as otherwise indicated, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Amend Rule 7.02 as follows:

Subdivision 1. Notice of Other Crime, Wrong, or Act. The prosecutor must notify the defendant or defense counsel in writing of any ~~additional offenses~~crime, wrong, or act that may be offered at the trial under ~~any exceptions to the general exclusionary rule~~Minnesota Rule of Evidence 404(b). No notice is required for any crime, wrong, or act:

(a) previously prosecuted,

(b) offered to rebut the defendant's character evidence, or

(c) arising out of the same occurrence or episode as the charged offense.

Subd. 2. Notice of a Specific Instance of Conduct. The prosecutor must notify the defendant or defense counsel in writing of the intent to cross-examine the defendant or a defense witness under Minnesota Rule of Evidence 608(b) about a specific instance of conduct.

Subd. 3. Contents of Notice. The notice required by subdivisions 1 and 2 must contain a description of each crime, wrong, act, or specific instance of conduct with sufficient particularity to enable the defendant to prepare for trial.

Subd. 4. Timing.

(a) In felony and gross misdemeanor cases, the notice must be given at or before the Omnibus Hearing under Rule 11, or as soon after that hearing as the other ~~offenses~~crime, wrong, or act or specific instance of conduct becomes known to the prosecutor.

(b) In misdemeanor cases, the notice must be given at or before a pretrial conference under Rule 12, if held, or as soon after the hearing as the other ~~offenses~~crime, wrong, or act or specific instance of conduct becomes known to the prosecutor. If no pretrial conference ~~is held~~occurs, the notice must be given at least 7 days before trial or as soon as the prosecutor learns of the other ~~offenses~~crime, wrong, or act or specific instance of conduct.

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

2. Amend Rule 15.03 as follows:

Rule 15.03 Alternative Methods ~~in Misdemeanor Cases~~

Subd. 1. Group Warnings in Misdemeanor Cases. The judge may advise a

number of defendants at once as to ~~the~~ their constitutional rights as specified in Rule 15.02, subd. 1, questions 2 through 5 above, and as to the consequences of a plea.

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

Subd. 2. Petition to Plead Guilty in Misdemeanor and Gross Misdemeanor Cases. As an alternative to the defendant personally appearing in court, the defendant or defense counsel may file with the court a petition to plead guilty. The petition must be signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor or gross misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.01 or 15.02. Proceeding under this subdivision requires either the assistance of counsel or a written waiver of the right to counsel.

3. Amend the Comment to Rule 15 at paragraph 7 as follows:

Under Rule 15.03, subd. 2, a "Petition to Enter Plea of Guilty" or a "Misdemeanor Petition to Enter Plea of Guilty" as provided for in ~~the~~ Appendix A and Appendix B to Rule 15, may be completed and filed with the court in gross misdemeanor and misdemeanor cases. ~~This~~These petitions in written form contain~~s~~ in substance the information and questions required by Rule 15.01 and 15.02~~, subd. 1, questions 2-5~~. When properly completed, the petition may be filed by either the defendant or defense counsel. It is not necessary for the defendant to personally appear in court when the petition is presented to the court. If the court is satisfied that the plea is being knowingly and voluntarily entered according to the applicable standards of Rule 15.01 or Rule 15.02, ~~subd. 1~~ it will dispose of the plea in the same manner as if the defendant entered the plea in person.

4. Amend Rule 22 and its Comment as follows:

Rule 22. Subpoena

Rule 22.01 For Attendance of Witnesses; For Documents. ~~Form; Issuance~~

Subd. 1. ~~When Issued.~~Witnesses. A subpoena may be issued for attendance of a witness:

(a) before a grand jury;
(b) at a hearing before the court;
(c) at a trial before the court; or

(d) for the taking of a deposition.

The subpoena must command attendance and testimony at the time and place specified.

~~**Subd. 2. By Whom Issued.**~~

~~(a) The court administrator issues a subpoena under the court's seal, signed but otherwise blank, to the party requesting it, who must fill in the blanks before service. The subpoena must state the name of the court and the title of the proceeding if the subpoena is for a hearing, trial, or deposition.~~

~~(b) A grand jury subpoena must be captioned "In the matter of the investigation by the grand jury of _____." (Insert here the name of the county or counties conducting the investigation.)~~

~~(c) The subpoena must command attendance and testimony at the time and place specified.~~

Subd. 2. Documents.

(a) A subpoena may command a person to produce books, papers, documents, or other designated objects.

(b) The court may direct production in court of the books, papers, documents, or objects designated in the subpoena, including medical reports and records ordered disclosed under Rule 20.03, subd. 1, before the trial or before being offered in evidence, and may permit the parties or their attorneys to inspect them.

Subd. 3. Unrepresented Defendant. A defendant not represented by an attorney may obtain a subpoena only by court order. The request and order may be written or oral. An oral order must be noted in the court's record.

Subd. 4. Grand Jury Subpoena. A grand jury subpoena must be captioned "In the matter of the investigation by the grand jury of _____." (Insert here the name of the county or counties conducting the investigation.)

Subd. 5. Motion to Quash. The court on motion promptly made may quash or modify a subpoena if compliance would be unreasonable.

Rule 22.02 ~~For Production of Documentary Evidence and of Objects~~By Whom Issued.

~~A subpoena may command a person to produce books, papers, documents, or other designated objects.~~

~~The court on motion promptly made may quash or modify a subpoena if compliance would be unreasonable.~~

~~The court may direct production in court of the books, papers, documents, or objects designated in the subpoena, including medical reports and records ordered disclosed under Rule 20.03, subd. 1, before the trial or before being offered in evidence, and may permit the parties or their attorneys to inspect them.~~

Subd. 1. By the Court. The court administrator issues a subpoena under the court's seal, signed but otherwise blank, to the attorney for the party requesting it, who must fill in the blanks before service. The subpoena must state the name of the court and the title of the proceeding if the subpoena is for a hearing, trial, or deposition.

Subd. 2. By an Attorney. Alternatively, an attorney, as an officer of the court, may issue a subpoena in a case in which the attorney represents a party. The attorney must personally sign the completed subpoena on behalf of the court, using the attorney's name. A subpoena issued by an attorney need not bear a seal, but must otherwise comply with the format requirements in subdivision 1. The completed subpoena must include:

(a) the attorney's printed name;
(b) attorney-registration number;
(c) office address and phone number; and
(d) the party the attorney represents.

Subd. 3. Deposition and Grand Jury Subpoenas. Subpoenas for a deposition may be issued only if the court under Rule 21.01 has ordered a deposition, or the parties under Rule 21.08 have stipulated to one. When so ordered or stipulated, deposition subpoenas may be issued only as provided in subdivisions 1 or 2 above, or in the case of unrepresented defendants, only by court order under Rule 22.01, subd. 3. Grand jury subpoenas may be issued only by the court administrator.

Rule 22.03 Service

A subpoena may be served by the sheriff, a deputy sheriff, or any person at least 18 years of age who is not a party.

Service of a subpoena on a person must be made by delivering a copy to the person or by leaving a copy at the person's usual place of abode with a person of suitable age and discretion who resides there.

A subpoena may also be served by U.S. mail, but service is effective only if the person named returns a signed admission acknowledging personal receipt of the subpoena. Fees and mileage need not be paid in advance.

Rule 22.04 Place of Service

A subpoena ~~requiring the attendance of a witness~~ may be served anywhere in the state.

Rule 22.05 Contempt

Failure to obey a subpoena without adequate excuse is a contempt of court.

Rule 22.06 Witness Outside the State

The attendance of a witness who is outside the state may be secured as provided by ~~law~~Minn. Stat. § 634.07 (Nonresidents Required to Testify in State).

Comment—Rule 22

~~*Subpoenas for attendance at a deposition may be issued only if the court has ordered the deposition or the parties have stipulated for a deposition under Rule 21.*~~

~~*Under Rule 22.01, subd. 2, a subpoena must be issued by the clerk. (This changes Minn. Stat. § 357.32 for the issuance of subpoenas by the county attorney for grand jury and criminal cases.)*~~

~~*This rule supersedes*~~*In addition to Rule 22.01, subd. 3, Minn. Stat. § 611.06* ~~*to the extent the statute is inconsistent with the rule*~~ *also addresses the issuance of subpoenas to unrepresented defendants and states that Rule 22.01, subd. 3 applies. The statute also requires that the issuance of subpoenas to self-represented defendants is without cost to the defendant.*

Rule 22 applies only to criminal proceedings in Minnesota. *It does not affect Minn. Stat. § 634.06, which provides a method for compelling Minnesota residents to testify in criminal cases in other states.*

5. Amend Rule 26.02, subd. 2, as follows:

Subd. 2. Juror Information.

(1) ~~Prospective Juror~~Jury Panel List. Unless the court orders otherwise after a hearing, the ~~The~~ court administrator must furnish to any party, upon request, ~~the parties~~ a list of ~~prospective jurors' names, addresses, and other information, unless the court orders otherwise after a hearing~~ persons on the jury panel, including name, city as reported on the juror questionnaire, occupation, education, children's ages, spouse's occupation, birth date, reported race and whether or not of Hispanic origin, gender, and marital status.

(2) Anonymous Jurors. On any party's motion, the court may restrict access to prospective and selected jurors' names, addresses, and other identifying information if a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality.

The court must hold a hearing on the motion and make detailed findings of fact supporting its decision to restrict access to juror information.

The findings of fact must be made in writing or on the record in open court. If ordered, jurors may be identified by number or other means to protect their identity. The court may restrict access to juror identity as long as necessary to protect the jurors. The court must minimize any prejudice the restriction has on the parties.

(3) Jury Questionnaire. On the request of a party or on its own initiative, the court may order use of a jury questionnaire as a supplement to voir dire. The questionnaire must be approved by the court. The court must tell prospective jurors that if sensitive or embarrassing questions are included on the questionnaire, instead of answering any particular questions in writing they may request an opportunity to address the court in camera, with counsel and the defendant present, concerning their desire that the answers not be public. When a prospective juror asks to address the court in camera, the court must proceed under Rule 26.02, subd. 4(4) and decide whether the particular questions may be answered during oral voir dire with the public excluded. The court must make the completed questionnaires available to counsel.

6. Amend Rule 26.03, subd. 5, as follows:

Subd. 5. Jury Sequestration.

(1) Discretion of the Court. From the time the jurors are sworn until they retire for deliberation, the court may permit them and any alternate jurors to separate during recesses and adjournments, or direct that they remain together continuously under the supervision of designated officers.

(2) On Motion. Any party may move for sequestration of the jury at the beginning of trial or at any time during trial. Sequestration must be ordered if the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the jurors' attention. Whenever sequestration is ordered, the court in advising the jury of the decision must not disclose which party requested sequestration.

(3) During Deliberations. ~~With the consent of the defendant and the prosecution,~~ Unless the court has ordered sequestration under paragraph (2), the court may allow the jurors to separate over night during deliberation.

(4) No Outside Contact. The supervising officers must not communicate with any juror concerning any subject connected with the trial, nor permit any other person to do so, and must return the jury to the courtroom as ordered by the court.

7. Amend Rule 26.03, subd. 20, clauses (1) and (2) as follows:

(1) Materials Allowed in Jury Room. The court must permit received exhibits or copies, except depositions and audio or video material, into the jury room. The court may permit a copy of jury instructions into the jury room.

(2) Requests to Review Evidence. The court may allow the jury to review specific evidence.

(a) If the jury requests review of specific evidence during deliberations, the court may permit review of that evidence after notice to the parties and an opportunity to be heard.

(b) Any jury review of testimony, depositions, or audio or video material must occur in open court. The court must instruct the jury to suspend deliberations during the review.

(c) The prosecutor, defense counsel, and the defendant must be present for the proceedings described in paragraphs (a) and (b), but the defendant may personally waive the right to be present.

~~(b)~~(d) The court need not submit evidence beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence.

8. Amend Rule 28.02, subd. 4(1), as follows:

(1) Service and Filing. A defendant appeals by filing a notice of appeal with the clerk of the appellate courts with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgement or order appealed from is entered. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case provided for in Minnesota Rule of Civil Appellate Procedure 133.03 unless the appellate court directs otherwise. The defendant does not have to post bond to appeal. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal.

9. Amend Rule 28.02, subd. 5(7), as follows:

(7) The State Public Defender's office's obligation to order and pay for transcripts for indigent defendants represented by private counsel on appeal is limited to the types of appeals or proceedings for which the State Public Defender's office is required to provide representation. If the court receives a request for transcripts made by an indigent defendant represented by private counsel, the court must submit the request to the State Public Defender's office for processing as follows:

a. The State Public Defender's office must determine ~~financial~~ eligibility of the applicant as in paragraphs (2) through (5) above.

b. If the defendant qualifies ~~financially~~, he or she may request the State Public Defender to order all parts of the trial transcript necessary for effective appellate review. The State Public Defender's office must order and pay for these transcripts.

c. If a dispute arises about the parts of the trial transcript necessary for effective appellate review, the defendant or the State Public Defender's office may make a motion for resolution of the matter to the appropriate court.

d. The State Public Defender's office must provide the transcript to the indigent defendant's attorney for use in the direct appeal. The attorney must sign a receipt for the transcript agreeing to return it to the State Public Defender's office after the appeal process.

10. Amend Rule 28.02, subd. 9, as follows:

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the transcript must be ordered within 30 days after filing of the notice of appeal and may be extended by the appellate court for good cause, and that the appellant must order an original and two copies of any transcript. The original transcript must be filed with the court administrator and a copy transmitted promptly to the attorney for each party. Upon the termination of the appeal, the clerk of the appellate courts must transmit the original transcript along with the remainder of the record to the court administrator.

If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the district court record, it becomes part of the record on appeal and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

If the appellant does not order the entire transcript, then within the 30 days permitted to order it, the appellant must file with the clerk of the appellate courts and serve on the court administrator and respondent a description of the parts of the transcript the appellant intends to include in the record, and a statement of the issues the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings necessary, the respondent must order from the reporter, within 10 days of service of the description or notification of no transcript, those other parts deemed necessary, or serve and file a motion in the district court for an order requiring the appellant to do so.

11. Amend Rule 28.04, subd. 6(3), as follows:

(3) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order granting postconviction relief under this rule:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;
(b) Rule 28.02, subd. 8: the record on appeal;
(c) Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript on record;
(d) Rule 28.02, subd. 10: briefs;
(e) Rule 28.02, subd. 13: oral argument;
(f) Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; ~~and~~
(g) Rule 28.04, subd. 2(6): attorney fees~~.~~; and
(h) Rule 28.06; voluntary dismissal.

12. Add a new Rule 28.06 as follows:

Rule 28.06 Voluntary Dismissal

If the appellant files with the clerk of the appellate courts a notice of voluntary dismissal, with proof of service upon counsel for respondent, the appellate court may dismiss the appeal.

13. Amend Rule 29.03, subd. 4, as follows:

Subd. 4. Other Procedures. The following rules govern the below-listed aspects of an appeal in a first-degree murder case:

(a) Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings;
(b) Rule 28.02, subd. 5: proceeding in forma pauperis;
(c) Rule 28.02, subd. 6: stay;
(d) Rule 28.02, subd. 7: release of defendant;
(e) Rule 28.02, subd. 9: transcript of proceedings and transmission of the transcript and record;
(f) Rule 28.02, subd. 10: briefs;
(g) Rule 28.02, subd. 11: scope of review;
(h) Rule 28.02, subd. 12: action on appeal; ~~and~~
(i) Rule 28.06; voluntary dismissal; and
~~(i)~~(j) Rule 29.04, subd. 9: oral argument.

14. Amend Rule 29.04, subd. 11, as follows:

Subd. 11. Other Procedures. The following rules govern the below-listed aspects of an appeal to the Supreme Court from the Court of Appeals:

(1) Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings;
(2) Rule 28.02, subd. 5: proceeding in forma pauperis;
(3) Rule 28.02, subd. 6: stay;

(4) Rule 28.02, subd. 7: release of defendant;
(5) Rule 28.02, subd. 8: record on appeal;
(6) Rule 28.02, subd. 11: scope of review; ~~and~~
(7) Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal~~.~~; and
(8) Rule 28.06; voluntary dismissal.

15. Amend Rule 33.04(a) as follows:

(a) Search warrants and search warrant applications, affidavits and inventories – including statements of unsuccessful execution – and papers required to be served must be filed with the court administrator. Papers must be filed as in civil actions, except that when papers are filed by facsimile transmission, a facsimile filing fee is not required and the originals of the papers described in Rule 33.05 must be filed as Rule 33.05 provides. ~~but the originals of papers filed by facsimile transmission must be filed as provided in Rule 33.05.~~

16. Amend Rule 33.05 as follows:

Rule 33.05 Facsimile Transmission

Complaints, orders, summons, warrants, and ~~other~~ supporting documents – including orders and warrants authorizing the interception of communications under Minnesota Statutes, Chapter 626A – may be sent via facsimile transmission. Procedural and statutory requirements for the issuance of a warrant or order must be met, including the making of a record of the proceedings. A facsimile order or warrant issued by the court has the same force and effect as the original for procedural and statutory purposes. The original order or warrant, along with any ~~other~~ supporting documents and affidavits, must be delivered to the court administrator of the county in which the request or application was made. The original of any facsimile transmissions received by the court under this rule must be promptly filed.