OFFICE OF
APPELLATE COURTS

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FILED

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049

**ORDER AMENDING RULES
OF CRIMINAL PROCEDURE**

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure filed a report on August 1, 2011, proposing amendments to the Minnesota Rules of Criminal Procedure. This court requested public comment through October 17, 2011. Based on that first round of comments, the Advisory Committee on Rules of Criminal Procedure filed an amended proposal on December 13, 2011. By order dated December 22, 2011, this court established a February 6, 2012, deadline for submitting written comments on the amended proposal. The court has reviewed the proposed amendments and submitted comments, and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

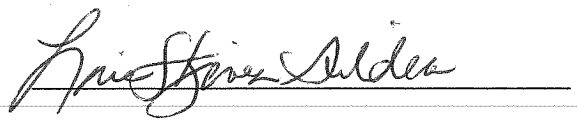
1. The attached amendments to Rule 23 of the Minnesota Rules of Criminal Procedure be, and the same are, prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota to be effective August 1, 2012, and shall apply to offenses committed on or after the effective date.

2. The other attached amendments to the Minnesota Rules of Criminal Procedure be, and the same are, prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota to be effective August 1, 2012, and shall apply to all actions or proceedings pending on or commenced on or after the effective date.

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

Dated: June 5, 2012

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Amend Rule 1.05, subd. 2, as follows:

Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure must be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 2, and by phone in Rule 26.03, subd. ~~1(3)~~41(3)5.

2. Amend Rule 5.03, clause (i), as follows:

(i) If the offense is a gross misdemeanor and the defendant has had an opportunity to consult with an attorney, the defendant may plead guilty in accordance with Rule ~~15.01~~15.02.

3. Amend Rule 5.04, subd. 1, as follows:

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

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

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

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

(a) charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration, or subject to an extradition proceeding or probation revocation proceeding;

(b) not represented by counsel; and

(c) financially unable to obtain counsel.

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

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

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

(a) nature of the charges;

(b) all offenses included within the charges;

(c) range of allowable punishments;

(d) there may be defenses;

(e) mitigating circumstances may exist; and

(f) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.

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

4. Amend Rule 5.07, subd. 1, as follows:

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

The defendant may plead guilty to a gross misdemeanor charge in accordance with Rule ~~15.01~~15.02 if the defendant has counsel, or has had the opportunity to consult with counsel before pleading guilty. If the defendant does not plead guilty, entry of a plea must await the Rule 8 or Omnibus Hearing. A corporation must appear by counsel or by an authorized officer.

5. Amend the fourth paragraph in the Comments to Rule 5 as follows:

Under Rules 5.03(i) and 5.07, a defendant may plead guilty to a gross misdemeanor at the first appearance under Rule 5 in accordance with the guilty plea provisions of Rule ~~15.01~~15.02. If that is done, the defendant must first have the opportunity to consult with an attorney. If the guilty plea is to a designated gross misdemeanor prosecuted by tab charge, a complaint must be filed before the court accepts the guilty plea. See Rule 4.02, subd. 5(3), and the comments to that rule. See also Rule 5.04, subd. ~~1(4)~~1(3), concerning waiver of the right to counsel. Rule 5.03(i) does not permit a defendant to enter a plea of not guilty to a gross misdemeanor at the first appearance under Rule 5. Rather, in accordance with Rules 8.01 and 11.08, a not-guilty plea in felony and gross misdemeanor cases is not entered until the Omnibus Hearing or later.

6. Amend the third paragraph in the Comments to Rule 6 as follows:

Rule 6.01, subd. 4(b) reiterates that the citation must contain the statutorily required notice that failure to appear for a petty misdemeanor offense results in a conviction. As stated in the rule, the citation must direct the defendant to either appear or contact the court by a particular date. This means a conviction will be entered~~ under the statutory process~~: (1) if the defendant fails to appear on the scheduled court date; (2) if the defendant fails to pay the fine or otherwise contact the court by the scheduled deadline; or (3) if the defendant requests an initial hearing on the citation but then fails to appear for it. ~~The statutory conviction procedure is not applicable, however, if the defendant invokes the process available in the Rules of Criminal Procedure by making an initial appearance but then fails to appear for a subsequent hearing. See State v. Haney, 600 N. W2d 469 (Minn. Ct. App. 1999) and Judicial Council Policy 515, Petty Misdemeanor Failure to Appear.~~

7. Amend Rule 14.02, subds. 1 and 2, as follows:

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

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

8. Amend the fourth paragraph in the Comments to Rule 14 as follows:

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

9. Amend the Title of Rule 15.01 as follows:

Rule 15.01. Felony ~~and Gross Misdemeanor~~ Cases

10. Amend the Title of Rule 15.02 as follows:

Rule 15.02. Gross Misdemeanor and Misdemeanor Cases

11. Amend Rule 15.02, subd. 1, as follows:

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

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

2. Understands that the maximum possible sentence is 90 days imprisonment for a misdemeanor and 1 year imprisonment for a gross misdemeanor, and a fine in the amount allowed by applicable law. (Under the applicable law, if the maximum sentence is less, it should be so stated.)

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

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

5. Understands and waives the right to:

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

(b) confront and cross-examine all prosecution witnesses;

(c) subpoena and present defense witnesses;

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

(e) be presumed innocent and that the prosecutor must prove the case beyond a reasonable doubt; and

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

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

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

12. Amend Rule 15.03 as follows:

Rule 15.03. Alternative Methods in Misdemeanor and Gross Misdemeanor Cases

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

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

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

13. Amend Rule 15.09 as follows:

Rule 15.09. Record of Proceedings

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

14. Amend the seventh paragraph in the Comments to Rule 15 as follows:

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

15. Amend Rule 23.03, subd. 2, paragraph 1, as follows:

(1) Uniform Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for statutory petty misdemeanors and for statutory misdemeanors as it selects. The uniform schedule is applicable statewide, and is known as the Statewide Payables List.

16. Amend Rule 23.04 as follows:

Rule 23.04. Certification as a Petty Misdemeanor in a Particular Case

Before trial, the prosecutor may certify ~~the~~a misdemeanor offense as a petty misdemeanor if the prosecutor does not seek incarceration, and seeks a fine at or below the statutory maximum for a petty misdemeanor. Subject to the following exception, c~~C~~ertification takes effect only on approval of the court and consent of the defendant. Certification does not require the defendant's consent if the offense is included on the Statewide Payables List on the date of the alleged offense.

17. Amend Rule 23.05 as follows:

Rule 23.05. Procedure in Petty Misdemeanor Cases

Subd. 1. No Right to Jury Trial. No right to a jury trial exists in a misdemeanor charge certified as a petty misdemeanor under Rule 23.04.

Subd. 2. Right to Appointed Counsel. A defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. In these cases, the defendant must qualify financially prior to appointment.

Subd. 3. General Procedure. A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt. Except as otherwise provided in Rule 23, the procedure in petty misdemeanor cases must be the same as for misdemeanors punishable by incarceration.

Subd. 4. Failure to Appear. If a defendant charged with a petty misdemeanor, or a misdemeanor on the Statewide Payables List that is certified as a petty misdemeanor, fails to appear or respond as directed on the citation or complaint, a guilty plea and conviction may be entered, the payable fine amount no greater than the maximum fine for a petty misdemeanor, and any applicable fees and surcharges, may be imposed, and the matter referred to collections. Conviction must not be entered until 10 days after the failure to appear.

Subd. 5. Withdrawal of Plea. A defendant convicted under subdivision 4 may move under Rule 15.05 to withdraw the guilty plea and vacate the conviction.

18. Amend the seventh paragraph in the Comments to Rule 23, as follows:

Contrary to what ~~is provided in~~ Rule 23.04 provides, Minn. Stat. § 609.131, enacted by the legislature in 1987 (Chapter 329, Section 6), purports to allow the reduction of any misdemeanor to a petty misdemeanor without the defendant's consent ~~of the defendant~~. The Advisory Committee is aware of this statute, but after consideration rejected ~~any change in the~~ fully conforming the Rule to the statute. On ~~such~~ these matters of procedure, the Rules of Criminal Procedure take precedence over statutes to the extent ~~there is~~ any inconsistency exists. State v. Keith, 325 N.W.2d 641 (Minn. 1982).

19. Amend Rule 26.03, subd. 1, clause (3), as follows:

(3) *Presence Not Required.*

1. Corporations. A corporation may appear by counsel.

2. Felony~~ and Gross Misdemeanors~~. In felony~~ and gross misdemeanor~~ cases, the court may, on the defendant's motion, excuse the defendant's presence except at arraignment, plea, trial, and sentencing.

3. Gross Misdemeanors. In gross misdemeanor cases, the court may, on the defendant's motion, excuse the defendant's presence except at trial.

~~3.~~4. Misdemeanors. In misdemeanor cases, if the defendant consents either in writing or on the record, the court must excuse the defendant from appearing for arraignment or plea, and the court may excuse the defendant from appearing at trial or sentencing.

~~4.~~5. ITV or Telephone. If a defendant consents, the court may allow the parties, lawyers, or the court to appear using ITV or telephone in any proceeding where the defendant could waive appearance under these rules.

20. Amend Rule 27.02 as follows:

Rule 27.02. Presentence Investigation in Misdemeanor and Gross Misdemeanor Cases

The court may permit that an~~An~~ oral presentence report~~ may~~ be given in misdemeanor and gross misdemeanor cases. If an oral report is given, the parties must be permitted to hear it.

21. 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.

22. Amend Rule 30.01 as follows:

Rule 30.01. By Prosecutor

The prosecutor may dismiss a complaint or tab charge without the court's approval, and may dismiss an indictment with the court's approval. The prosecutor must state the reasons for the dismissal in writing or on the record. In felony ~~and gross misdemeanor~~ cases, if the dismissal is on the record, it must be transcribed and filed.

23. Delete the following Criminal Forms:

Form 4. Citation for Misdemeanor or Petty Misdemeanor.
Form 5. Citation for Felony or Gross Misdemeanor.
Form 26. District Court Subpoena–Subpoena Duces Tecum.

24. Amend Appendix B to Rule 15 as follows:

APPENDIX B TO RULE 15

STATE OF MINNESOTA
COUNTY OF _____

IN DISTRICT COURT
_____ JUDICIAL DISTRICT

_____,
Plaintiff,

vs.

_____,
Defendant.

MISDEMEANOR
/GROSS MISDEMEANOR
PETITION TO
ENTER PLEA OF GUILTY
District Court File No.

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~~any misdemeanor offense to which I am pleading guilty is 90 days imprisonment or a fine of (amount) or both, and that the maximum possible sentence for any gross misdemeanor offense to which I am pleading guilty is 1 year imprisonment or a fine of (amount) or both. Further, I understand that if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation, exclusion from admission to the United States or denial of naturalization as a United States citizen.

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