

PROPOSED AMENDMENTS TO THE  
RULES OF CRIMINAL PROCEDURE

-1987-

The Supreme Court Advisory Committee on the 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. Rule 1.01. Scope and Application.

Because of the merger of all Minnesota trial courts into the district court pursuant to Minn. Stat. §487.191, amend this rule as follows:

"Rule 1.01. Scope and Application

These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the ~~municipal, county and~~ district courts in the State of Minnesota. Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.

~~The term "County Court" as used in these rules shall include a Municipal Court, except where expressly stated otherwise."~~

2. Comments on Rule 1.01.

To conform to the proposed amendments of Rule 1.01, concerning Court unification amend the first two paragraphs of the comments on Rule 1 as follows:

"By Rule 1.01, these rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the ~~municipal, county and~~ district courts in the State of Minnesota. Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.

~~The term "county court" as used in the rules includes the municipal courts of Hennepin and Ramsey Counties which are~~

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RULES OF CRIMINAL PROCEDURE

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APR 28 1987

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CONSULTANT

May 19, 1987

Chief Justice Douglas K. Amdahl  
Supreme Court  
230 State Capitol Building  
St. Paul, Minnesota 55155

Justice George M. Scott  
Supreme Court  
230 State Capitol  
St. Paul, Minnesota 55155

Re: Rules of Criminal Procedure

Dear Chief Justice Amdahl and Justice Scott:

Upon request of the Court, the Supreme Court Advisory Committee on the Rules of Criminal Procedure has again reviewed the Minnesota Rules of Criminal Procedure. The review was not comprehensive of all the rules, but rather focused on issues raised and comments received since the last amendments to the rules became effective on August 1, 1983. Also, the Committee considered the changes necessary in the rules due to the elimination of the county courts of the state by reason of their merger into the district courts pursuant to Minn. Stat. §487.191. As a result of this review the Advisory Committee recommends that the Supreme Court adopt the proposed amendments to the Rules of Criminal Procedure submitted herewith.

In addition to the issues considered as reflected in the proposed amendments, the Committee discussed at length the policy of the State Public Defender's Office concerning the provision of transcripts to defendants. Based upon that discussion, the Committee makes no recommendation for changing the Rules of Criminal Procedure concerning transcripts. By vote of the Advisory Committee we generally endorse the State Public Defender's procedure concerning transcripts, but suggest that in exigent circumstances a transcript be provided to the defendant.

Respectfully yours,



Frank Claybourne, Chairman  
Supreme Court Advisory Committee

FC:jj56  
Enclosure

APR 28 1987

C1-84-2137

REPORT TO THE MINNESOTA SUPREME COURT  
FROM  
THE SUPREME COURT ADVISORY COMMITTEE ON  
RULES OF CRIMINAL PROCEDURE

WAYNE TSCHIMPERLE  
CLERK

Upon request of the Court, the Supreme Court Advisory Committee on the Rules of Criminal Procedure has again reviewed the Minnesota Rules of Criminal Procedure. The review was not comprehensive of all the rules, but rather focused on issues raised and comments received since the last amendments to the rules became effective on August 1, 1983. Also, the Committee considered the changes necessary in the rules due to the elimination of the county courts of the state by reason of their merger into the district courts pursuant to Minn. Stat. §487.191. As a result of this review the Advisory Committee recommends that the Supreme Court adopt the proposed amendments to the Rules of Criminal Procedure submitted herewith.

In addition to the issues considered as reflected in the proposed amendments, the Committee discussed at length the policy of the State Public Defender's Office concerning the provision of transcripts to defendants. Based upon that discussion, the Committee makes no recommendation for changing the Rules of Criminal Procedure concerning transcripts. By vote of the Advisory Committee we generally endorse the State Public

Defender's procedure concerning transcripts, but suggest that in exigent circumstances a transcript be provided to the defendant.

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

Respectfully submitted,

\_\_\_\_\_  
Frank Claybourne, Chairman  
Supreme Court Advisory Committee

~~governed under Minn. Stat. Ch. 488A as well as those courts governed by the County Court Act (Minn. Stat. Ch. 487)."~~

3. Rule 2.01. Contents; Before Whom Made.

Because of the merger of all Minnesota trial courts into the district court pursuant to Minn. Stat. § 487.191 amend the second paragraph of this rule as follows:

"Except as provided in Rules 11.06 and 15.08, it shall be made upon oath before a judge or judicial officer of the ~~county or district court~~. Provided, however, when authorized by court rule, the oath may be made before the clerk or deputy clerk of court when the offense alleged to have been committed is punishable by fine only."

4. Comments on Rule 2.01.

To conform to the proposed amendment of Rule 2.01 concerning court unification, amend the third paragraph of the comments on Rule 2 as follows:

"Except as provided in Rules 11.06 and 15.08 authorizing the substitution of a new complaint to permit a plea to a misdemeanor or different offense, the complaint shall be made on oath before any judge or judicial officer of a ~~county or district court~~."

5. Comments on Rule 2.02.

To conform to the proposed amendments of Rule 2 concerning Court unification amend the ninth paragraph of the comments on Rule 2 as follows:

"If the prosecuting attorney is unavailable and it is necessary that the complaint be filed at once, the ~~municipal court or county court~~ judge authorized to issue process on the complaint or the judicial officer ~~of a county court~~ with that power may permit the complaint to be filed and upon a finding of probable cause, issue process thereon."

6. Rule 3.01. Issuance.

Because of the merger of the Minnesota trial courts into the district court pursuant to Minn. Stat. § 487.191, delete the last paragraph of this rule entirely and amend the second paragraph as follows:

"The warrant or summons shall be issued by a judge or judicial officer of the ~~county or district court~~. Provided that when the offense is punishable by fine only, the clerk

or deputy clerk of court may also issue the summons when authorized by court rule."

7. Rule 3.02, Subd. 2. Directions of Warrant.

Because of court unification, amend this rule as follows:

"Subd. 2. Directions of Warrant. The warrant shall direct ~~as follows:~~

~~(1)---Issuance-by-County-or-Municipal-Court;---When-the warrant-is-issued-by-a-county-or-municipal-court,~~ that the defendant be brought promptly before the court that issued the warrant if it is in session.

~~(2)---Available-Judge-or-Judicial-Officer.~~ If the county or municipal court specified in ~~Rule 3.02, subd. 2(1)~~ is not in session, the warrant shall direct that the defendant be brought before a judge or judicial officer of such court, without unnecessary delay, and in any event not later than 36 hours after the arrest exclusive of the day of arrest, or as soon thereafter as such judge or judicial officer is available."

8. Comments on Rule 3.01.

To conform to the proposed amendment of Rule 3.01 concerning court unification, delete entirely the eighth paragraph of the comments on Rule 3.

9. Comments on Rule 3.02.

To conform to the proposed amendment of Rule 3.02 concerning court unification, amend the thirteenth and fourteenth paragraphs of the comment on Rule 3 as follows:

"The first limitation (Rule 3.02, subd. 2(1)) is that if the ~~county-or-municipal~~ court which issued the warrant is in session when the defendant is arrested, he shall be brought promptly before that court. The 36-hour time period provided by Rule 3.02, subd. 2(2) is not applicable to this first limitation under Rule 3.02, subd. 2(1). Ordinarily the defendant shall be brought directly before the court if it is in session.

The second limitation (Rule 3.02, subd. 2(2)) is that if the ~~county-or-municipal~~ court which issued the warrant is not then in session, the defendant shall be taken before the nearest available judge or judicial officer of the issuing ~~county-court-or-judge-of-the-issuing-municipal~~ court without unnecessary delay, but in any event not more than 36 hours after the arrest or as soon after the 36-hour period as a

judge or judicial officer of the issuing ~~county court or judge of the issuing municipal~~ court is available. (This rule changes Minn.Stat. §629.46 (1971) in that it does not require that the defendant be brought before a judge or judicial officer of the issuing court in the county from which the warrant was issued. The rule requires only that the defendant be brought before a judge or judicial officer of the issuing court.)"

10. Rule 4.02, Subd. 2. Citation.

Because of court unification, amend this rule as follows:

"Subd. 2. Citation. The arresting officer or his 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 county district court of the county where the alleged offense occurred ~~or by a judge of a municipal court in such county~~ or by any person designated by the court to perform that function."

11. Rule 4.02, Subd. 5(1) Before Whom and When.

Because of court unification, amend the first sentence of this rule as follows:

"If an arrested person is not released pursuant to this rule or Rule 6, he shall be brought before the nearest available judge of the county district court of the county where the alleged offense occurred or judicial officer of such court ~~or judge of a municipal court in such county.~~"

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

Because of court unification, amend this rule as follows:

"Rule 5.03 Date of Rule 8 Appearance in District Court; Consolidation of Appearances Under Rule 5 and Rule 8

If the defendant is charged with a felony or gross misdemeanor and has not waived his right to a separate appearance under Rule 8 as provided in this rule, the judge or judicial officer shall set a date for ~~and order the appearance of the defendant 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.

The defendant shall be informed of the time and place of such appearance and ordered to appear as scheduled. The time for appearance may be extended by the district court for good cause.

Notwithstanding any rule to the contrary, in felony and gross misdemeanor cases, ~~if-it-has-been-mutually-agreed-between-the-district-court-and-the-county-court-or-if-ordered-by-the-Supreme-Court,~~ the defendant may be permitted to waive the separate ~~initial~~ appearance otherwise required by this rule and Rule 8. Any such waiver shall be made either in writing or orally on the record in open court. If a separate ~~initial~~ appearance under Rule 8 is waived by the defendant, all of the functions and procedures provided for by both Rule 5 and Rule 8 shall take place at the one consolidated appearance."

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

Because of court unification, amend the second sentence of the first paragraph of this rule as follows:

"Following a plea of guilty, the defendant may be permitted upon his or his attorney's request, to plead guilty to other misdemeanor offenses committed within the jurisdiction of other ~~county~~ courts in the state provided that such plea has been approved by the prosecuting attorney of the governmental unit in which the offenses are or could be charged."

14. Rule 5.07. Transmission to District Court.

Because of court unification, delete this rule entirely.

15. Rule 5.08. First Appearance in District Court.

Because of court unification, delete this rule entirely.

16. To conform to the proposed amendments of Rule 5.03 concerning court unification, amend the first three paragraphs 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 ~~county court-judge~~ or judicial officer ~~or-municipal-court-judge~~ for the defendant's appearance in the district court under Rule 8, where he will be arraigned upon the complaint (Rules 8.01, 12), and if he does not then plead guilty, a date will be fixed by the district court (Rule 8.04) for the Omnibus Hearing provided for by Rule 11.



The date fixed by the ~~county-court-judge~~ or judicial officer ~~or-municipal-court-judge~~ (Rule 5.03) for the defendant's ~~first-appearance~~ before the district court under Rule 8 shall be not more than 14 days after the defendant's initial appearance (Rule 5), but the district court may extend the time for good cause (Rule 5.03). The ~~county-court-judge~~ or judicial officer ~~or-municipal-court-judge~~ shall set the date in accordance with a time schedule or other order or directive previously furnished or made by the district court (Rule 5.03).

In certain circumstances a separate appearance to fulfill the requirements of Rule 8 may serve very little purpose. ~~This-is-particularly-so-if-the-appearance-required-by-Rule-5-and-that-required-by-Rule-8-are-to-be-held-in-the-same-court.~~ Originally these rules required the appearance under Rule 5 to be in the county court and the appearance under Rule 8 to be in the district court. Now, ~~if-mutually-agreed-between-the-district-court-and-the-county-court-or-if-ordered-by-the-Supreme-Court,~~ Rule 5.08 also permits the Rule-5-appearance-to-be-both appearances are held in the district court ~~and-Rule-8-also-permits-the-appearance-under-that-rule-to-be-held-in-the-county-court.~~ ~~When-these-options-are-used,~~ the. The additional time and judicial resources invested in a separate appearance under Rule 8 may yield little or no benefit. Therefore, ~~if-agreed-by-the-district-court-and-the-county-court-or-if-ordered-by-the-Supreme-Court,~~ Rule 5.03 permits the appearances required by Rule 5 and Rule 8 to be consolidated upon request of the defendant."

17. Comments on Rule 5.04, Subd. 2.

To conform to the proposed amendment of Rule 5.04, subd. 2 concerning court unification amend the first sentence of the paragraph in the comments concerning that rule as follows:

"Following a plea of guilty a defendant or his attorney 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 ~~county-or-municipal-court.~~"

18. Comments on Rule 5.07.

To conform to the proposed deletion of Rule 5.07 delete the sentence in the comments concerning that rule as follows:

~~"In-the-case-of-a-felony-or-gross-misdemeanor-the-record-shall-be-transmitted-to-the-district-court-(Rule-5-07)."~~

19. Comments on Rule 5.

To conform to the proposed amendments concerning court unification, amend the paragraph in the comments setting forth the time table for felony and gross misdemeanor cases as follows:

"From the time of the defendant's initial appearance in ~~municipal-or-county-court~~ under Rule 5 until the Omnibus Hearing (Rule 11), the following schedule of events shall take place in felony and gross misdemeanor cases in which the appearances under Rule 5 and Rule 8 have not been consolidated pursuant to Rule 5.03:

1. Defendant's Initial Appearance before ~~municipal-or-county court-(Rule-5)-the court under Rule 5.~~
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 ~~initial~~ appearance in the district court under Rule 8.
3. ~~Initial~~ Appearance in the district court under Rule 8 (Rule-8) (within 14 days after his initial appearance in ~~county-or-municipal-court-(Rule-5)-under Rule 5~~).
4. Service of Spreigl (State v. Spreigl, 272 Minn. 488, 139 N.W. 2d 167 (1965)), State v. Billstrom, 275 Minn. 525, 149 N.W.2d 281 (1967) notice on the defendant (Rule 7.02) on or before the date of the Omnibus Hearing (Rule 11).
5. Completion of discovery required of prosecution and defendant without order of court (Rules 9.01, subd. 1; 9.02, subd. 1) before the Omnibus Hearing (Rule 7.03).
6. Service of pretrial motions (Rules 10, 9.01, subd. 2; 9.02, subd. 2; 9.03, subd. 3; 18.02, subd. 2; 17.03, subd. 3 and subd. 4; 17.06; 20.01, subd. 2; 20.03, subd. 1) to be heard at the Omnibus Hearing (3 days before the Omnibus Hearing (Rule 10.04, subd. 1).)
7. Omnibus Hearing under Rule 11 within 14 days after defendant's ~~initial~~ appearance in the district court ~~(Rule 8)-under Rule 8~~ and within 28 days after defendant's initial appearance ~~in-the-municipal-or-county-court-under Rule 5.~~"

20. Comments on Rule 5.08.

To conform to the proposed deletion of Rule 5.08 due to court unification, delete entirely the last paragraph of the comments on Rule 5.

21. Rule 6.01, Subd. 1. Mandatory Issuance of Citation.

Because of court unification and to delete the requirement that a defendant sign a citation before it is issued, amend this rule as follows:

"(1) For Misdemeanors.

(a) By Arresting Officers. Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued ~~if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.~~

(b) At Place of Detention. When a person arrested without a warrant for a misdemeanor or misdemeanors, is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued ~~if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.~~

(2) For Misdemeanors, Gross Misdemeanors and Felonies When Ordered by Prosecuting Attorney or Judge. An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue a citation in lieu of continued detention if so ordered by the prosecuting attorney or by the judge of a ~~district, county or municipal~~ court or by any person designated by the court to perform that function."

22. Rule 6.01, Subd. 3. Form of Citation.

To delete the requirement that a defendant sign a citation before it is issued, amend this rule as follows:

"Subd. 3. Form of Citation. A citation shall direct the accused to appear before a designated court or violations bureau at a specified time and place, ~~and need not be issued if the accused refuses to sign the citation promising to appear at that time and place.~~ The citation shall state that if the defendant fails to appear in response to the citation, a warrant of arrest may issue."

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

Because of court unification amend the first sentence of this rule as follows:

"Any person charged with an offense shall be released without bail pending his first court appearance when ordered by the prosecuting attorney, the judge of a district ~~or county~~-court, or by any person designated by the court to perform that function."

24. Comments on Rule 6.01.

To conform to the proposed amendments of Rule 6.01, amend the first paragraph of the comments on Rule 6 as follows:

"In misdemeanor cases ~~if the defendant agrees to sign a citation, it is~~ 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 could not be incarcerated even if found guilty."

25. Comments on Rule 6.01.

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

"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 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. need be specified no more definitely than the words of the rule and may be in the form of a checklist. 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."

26. Comments on Rule 6.01.

To conform to the proposed amendment of Rule 6.01 concerning court unification, amend the eighth paragraph of the comments as follows:

"Rule 6.01, subd. 1(2) requires that a citation be issued for any offense whenever ordered by the prosecuting attorney or by a ~~county, municipal or~~ district court judge."

27. Comments on Rule 6.01.

To conform to the proposed amendments of Rule 6.01, amend the tenth paragraph of the comments on Rule 6 as follows:

"The form of citation prescribed by Rule 6.01, subd. 3 follows ABA Standards, Pre-Trial Release, 1.4(a) (Approved Draft, 1968), except that the provision for a written promise to appear has been eliminated. It is the belief of the Advisory Committee that requiring a written promise to appear will add very little additional assurance that the defendant will appear and may cause an unnecessary confrontation between the defendant and the law enforcement officer. If it reasonably appears to the law enforcement officer that there is a substantial likelihood that the accused will fail to respond to the citation, an arrest may be made."

28. Comments on Rule 7.

To conform to the various proposed amendments concerning court unification, amend the first paragraph of the comments 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 ~~initial~~ appearance in the district court under Rule 8 (~~Rule 8~~) (within ~~10-14~~ days after his first appearance in the ~~municipal or county court~~ under Rule 5 (~~Rule-5~~)) in order that he may determine at the time of his appearance in the district court under Rule 8 (~~Rule-8~~) whether to waive or demand a Rasmussen hearing (Rule 8.03). If he then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) 14 days later."

29. Comments on Rule 7.

To correct a mistake in the comments, delete the reference

to "Rule 5.04, subd. 5" in the first sentence of the second paragraph and substitute "Rule 5.04, subd. 4".

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

Because of court unification, amend the title of Rule 8 as follows:

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

31. Rule 8.01. Place of Appearance and Arraignment.

Because of court unification, amend the first paragraph of the rule as follows:

"The defendant's initial appearance following the complaint under this rule shall be held in the district court of the judicial district where the alleged offense was committed. ~~If it has been mutually agreed between the district court and the county court, or if ordered by the Supreme Court, the appearance may be referred to the county court of the county where the alleged offense was committed. The procedures upon an initial appearance in county court shall be the same as in district court.~~"

32. Rule 8.02. Plea of Guilty.

Because of court unification, amend this rule as follows:

"Rule 8.02. Plea of Guilty  
At an initial appearance, ~~whether in district court or in county court pursuant to Rule 8.01,~~ 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 enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be followed."

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

Because of court unification, 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

upon motion of the defendant or upon the court's own motion."

34. Comments on Rule 8.

To conform to the proposed amendments in Rule 8 and elsewhere concerning court unification, delete entirely the eighth and ninth paragraphs of the comments on this rule and amend the last sentence of the first paragraph of the comments as follows:

"At this stage of the proceeding, the complaint which was filed in the ~~county or municipal 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. §§628.29-628.33 (1971)) and provides the basis for the court's jurisdiction over the prosecution and the offenses charged in the complaint."

35. Rule 9.01, Subd. 2. Discretionary Disclosure Upon Order of Court.

Because of court unification, amend this rule as follows:

"Subd. 2. Discretionary Disclosure Upon Order of Court. Upon motion of the defendant with notice to the prosecuting attorney, the trial court at any time before trial ~~or a county or municipal court at the Omnibus Hearing provided by Rule 11~~ 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."

36. Rule 9.02, Subd. 2. Discovery Upon Order of Court.

Because of court unification, amend the first sentence of part (1) of this rule preceding the colon as follows:

"(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, ~~or the county or municipal court, either when the defendant is admitted to bail or otherwise released, or~~

~~at the Omnibus Hearing prescribed by Rule 11~~ may, subject to constitutional limitations, order a defendant to:"

37. Comments on Rule 9.

To conform to the proposed amendments in Rule 9 and elsewhere concerning court unification, 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 ~~municipal or county~~ court following a complaint under Rule 5 (~~Rule 5~~), or within 14 days after his 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)."

38. Comments on Rule 9.02, Subd. 2.

To conform to the proposed amendments in Rule 9 and elsewhere concerning court unification, amend the thirty-sixth and thirty-seventh paragraphs of the comments on Rule 9 as follows:

"Following indictment, the order under Rule 9.02, subd. 2 may be obtained from the district court at any time before trial, but preferably it should be sought at or before the Omnibus Hearing under Rule 11 ~~if one is held before the district court. If the Omnibus Hearing is held before a county or municipal court, the order may be sought at or before the Omnibus Hearing.~~

Following a complaint charging a felony or gross misdemeanor, the order may be obtained ~~from a county or municipal court~~ 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."

39. Rule 11.01. Reference to County or Municipal Court.

Because of court unification, amend this rule as follows:

"Rule 11.01. ~~Reference to County or Municipal Court~~  
Place of Hearing



The hearing shall be held in the district court in the judicial district wherein the alleged offense was committed. ~~In cases wherein it is mutually agreed between the district court and the county or municipal court, or when ordered by the Supreme Court, the hearing may be referred to the county court or municipal court of the county wherein the alleged offense was committed.~~"

40. Rule 11.06. Pleas.

Because of court unification, amend this rule as follows:

"Rule 11.06. Pleas

At the hearing, ~~whether in the district court or in the county court pursuant to Rule 11.01,~~ the defendant may be permitted to plead to the offense charged in the complaint or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15."

41. Rule 11.09. Review.

Because of court unification, delete entirely this rule concerning the effect of omnibus hearing findings made by a county court.

42. Comments on Rule 11.

To conform to the proposed amendments in this rule and elsewhere concerning court unification, delete entirely the seventh paragraph of the comments on Rule 11 as follows:

~~"The Omnibus Hearing should preferably be held in the district court since issues affecting the trial will be heard and disposed of, but the hearing may be referred to the county or municipal court in the manner provided by Rule 11.01. -- (The rule does not permit reference of a part of an Omnibus Hearing.)"~~

43. Comments on Rule 11.06.

To conform the proposed amendments in this rule and elsewhere concerning court unification, amend the 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 to a lesser or different offense as provided by Rules 14 and 15, ~~whether the Omnibus Hearing is held in the district court or in the county or municipal court pursuant to rule 11.01.~~ See Rules 15.07 and 15.08 as to the standards and procedure for entering a plea to a lesser or a different offense."

44. Comments on Rule 13.

To conform to the proposed amendments in the rules concerning court unification, amend the seventh and eighth paragraphs of the comments on Rule 13 as follows:

~~"By Rule 11.06 he may plead at the Omnibus Hearing whether the Omnibus Hearing is held in the district court, the county court, or the municipal court.~~

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

45. Comments on Rule 14.

To conform to the proposed amendment in Rule 3.01 concerning court unification, amend the second to the last paragraph of the comments on Rule 14 as follows:

"Rule 14.02, subd. 3 provides for the procedure when a corporation fails to appear in response to a summons or an order of court or otherwise. (This changes Minn. Stat. §630.16 (1971) ~~(See Rule 3.01 for the procedure when a corporation fails to appear before a county or municipal court in response to a summons upon a complaint charging a felony or gross misdemeanor.)~~")

46. Rule 15.01. Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor cases.

To conform to Minn. Stat. §593.01 concerning the number of jurors for a gross misdemeanor trial, amend number 5 of this rule as follows:

"5. Whether he has been told by his attorney and understands that if he wishes to plead not guilty, he is entitled to a trial by a jury of 12 persons for a felony and 6 persons for a gross misdemeanor, and that he cannot be found guilty unless all ~~12 persons~~ jurors agree."

47. Rule 15.05, Subd. 1. To Correct Manifest Injustice.

To correct a typographical error in the rules amend the first sentence of this rule as follows:

"The court shall allow a defendant to withdraw his plea of guilty upon a timely motion and prove proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice."

48. Rule 15.09. Record of Proceedings.

To assure that a guilty plea transcript is available in time to prepare an informal letter brief for a sentencing appeal under Rule 28.05, amend this rule as follows:

"Rule 15.09. Record of Proceedings

Upon a guilty plea to an offense punishable by incarceration, either a verbatim record of the proceedings shall be made, or in the case of misdemeanors, a petition to enter a plea of guilty, as provided in the Appendix B to Rule 15, shall be filed with the court. In felony and gross misdemeanor cases, any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney."

49. APPENDIX A TO RULE 15.

To conform to Minn. Stat. §593.01, concerning the number of jurors for a gross misdemeanor trial, amend number 15.a. of Appendix A to Rule 15 to read as follows:

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

50. APPENDIX B TO RULE 15.

Because of court unification, amend the appendix by substituting "IN DISTRICT COURT" for "IN COUNTY COURT" and "JUDICIAL DISTRICT" for "CIVIL AND CRIMINAL DIVISION" in the caption of the Petition to Enter Plea of Guilty.

51. RULE 16. DISTRICT COURT MISDEMEANOR JURISDICTION.

Because of court unification, amend this rule as follows:

"RULE 16. DISTRICT-COURT-MISDEMEANOR PROSECUTION BY INDICTMENT-JURISDICTION

~~The district court shall try any misdemeanor offense prosecuted by indictment or which is joined with a felony or a gross misdemeanor prosecution pursuant to Minn. Stat. §609.035. Any such prosecutions shall be governed by these rules. In misdemeanor cases prosecuted by indictment, to the extent that Rule 19 conflicts with other rules, Rule 19 shall govern.~~

52. Comments on Rule 16.

To conform to the proposed amendment of Rule 16 concerning court unification, amend the comments on Rule 16 as follows:

"The grand jury, with its power under Minn. Stat. §628.02 to inquire into all "public offenses", could indict a defendant on misdemeanor charges. In those rare cases, Rule 16 provides that the ~~case shall be tried in district court. Also when a misdemeanor is joined with a felony for prosecution pursuant to Minn. Stat. §609.035, Rule 16 provides that the alleged misdemeanor offense shall be tried in the district court and~~ prosecution shall be governed by these rules Rule 19 in those instances where Rule 19 conflicts with those rules that would otherwise govern the misdemeanor prosecution."

53. Rule 17.06, Subd. 4. Effect of Determination of Motion to Dismiss.

Because of court unification, amend the last sentence of this rule as follows:

"In misdemeanor cases dismissed for failure to file 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 ~~county~~ court has so ordered."

54. Rule 18.04. Who May be Present.

Amend the third sentence of this rule as follows:

"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 attorney may be present while the witness is testifying, provided the attorney is then and there available for that purpose or his presence can be secured without unreasonable delay in the grand jury proceedings."

55. Rule 18.05, Subd. 2. Transcript.

Because of court unification, amend this rule as follows:

"Subd. 2. Transcript. Upon motion of the defendant with notice to the prosecuting attorney, the district court at any time before trial ~~or a county or municipal court at the Omnibus Hearing provided by Rule 11 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 expects to call the witness at the trial and that he will give relevant testimony favorable to the defendant."

56. Comments on Rule 18.04.

To conform to the proposed amendment of 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."

57. Rule 19.04, Subd. 4. Date for Arraignment.

To correct a mistaken reference to complaints in this rule, amend the last sentence of this rule as follows:

"If he 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 shall plead to the ~~complaint or the complaint as amended~~ indictment or be given additional time within which to plead."

58. Comments on Rule 19.04.

To conform to the proposed amendments in the rules concerning court unification, amend the first sentence of 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 shall be advised of the charges against him; provided with a copy of the indictment; given the advice required by Rule 5.01 (~~provided for upon initial appearance before a county or municipal court following a complaint~~); counsel shall be appointed for him if he 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 appearance in district court, unless the time is extended for good cause."

59. Comments on Rule 19.

To conform to the proposed amendments in the rules concerning court unification, amend the first sentence in the next to the last paragraph of the comments on Rule 19 as follows:

"The Omnibus Hearing shall be held in district court, ~~or by reference in a municipal or county court,~~ in accordance with the provisions of Rule 11. (See comments to Rule 11.)"

60. Rule 20.01, Subd. 2. Proceedings.

Because of court unification, amend part (1) of this rule as follows:

"(1) Misdemeanors. Court. ~~---If the case is pending before a municipal or county court and the charge is a felony or gross misdemeanor, the case shall be transferred to the district court of the county where the offense occurred for further proceedings in conformity with this rule.~~ 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."

61. Rule 20.01, Subd. 4(2)(c) Appeal.

Because of court unification, amend this rule as follows:

"(c) Appeal. Either party shall have the right of appeal to the Court of Appeals from a determination of the ~~county or~~ 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."

62. Rule 20.02, Subd. 8(3) Appeal.

Because of court unification, amend this rule as follows:

"(3) Appeal. Either party shall have the right to appeal to the Court of Appeals from a determination of the ~~county or~~ probate 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."

63. Comments on Rule 20.01, Subd. 2.

To conform to the proposed amendments of Rule 20.01, subd. 2 concerning court unification, amend the sixth paragraph of the comments on Rule 20 as follows:

"If the charge is a misdemeanor, the ~~county-or-municipal~~ court has the options of (1) following the procedures prescribed by Rules 20.01, subd. 2(2) to 20.01, subd. 9; (2) causing civil commitment proceedings to be instituted immediately under Minn. Stat. §253B.07 (1982) or; (3) dismissing the case, unless dismissal would be contrary to the public interest. (Rule 20.01, subd. 2(1).)"

64. Comments on Rule 20.01, Subd. 4.

To conform to the proposed amendments in the rules concerning court unification, amend the twelfth paragraph 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 is not under civil commitment, commitment proceedings under Minn. Stat. §253B.07 (1982) in the ~~county-or-probate~~ court shall be instituted against him."

65. Comments on Rule 20.01, Subd. 4.

To conform to the proposed amendments in the rules concerning court unification, amend the fifteenth paragraph of the rules as follows:

"Rule 20.01, subd. 4(2)(c) gives either party the right to appeal to the Court of Appeals from the determination of the ~~county-or-probate~~ court upon the civil commitment proceedings instituted under Rules 20.01, subd. 4(2)(a) and (b). The appeal shall be determined only upon the record made in the ~~county-or-probate~~ court, which shall be a verbatim record."

66. Rule 23.01. Definition of Petty Misdemeanor.

To provide for future increases in the maximum fine for petty misdemeanors, amend this rule as follows:

"Rule 23.01. Definition of Petty Misdemeanor  
As used in these rules, petty misdemeanor means a misdemeanor offense punishable only by fine of not more than \$100 or such other dollar amount as is established by Minn. Stat. §609.02, subd. 4a or other statute as the maximum fine for a petty misdemeanor."

67. Rule 23.03, Subd. 1. Establishment.

Because of court unification, amend this rule as follows:

"Subd. 1. Establishment. The ~~County-Court-district court~~ may establish misdemeanor violations bureaus at the places it determines."

68. Rule 23.03, Subd. 2. Fine Schedules.

Because of court unification, amend this rule as follows:

"Subd. 2. Fine Schedules.

(1) Uniform Fine Schedule. The ~~County-Court-Judges district court judges~~ of the state shall adopt and as necessary revise a uniform fine schedule setting forth fines to be paid to violations bureaus for all statutory petty misdemeanors and for such other statutory misdemeanors as the judges may select.

(2) County Fine Schedules. Upon establishment of a violations bureau, the ~~County-Court-district court~~ shall establish by court rule, for each county, a fine for any misdemeanor which may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is the same or substantially the same as an offense included on the uniform fine schedule, the fine established by the ~~County-Court-district court~~ shall be the same as the fine prescribed in the uniform fine schedule."

69. Rule 23.03, Subd. 5. Procedures of the Violations Bureau.

Because of court unification, amend this rule as follows:

"Subd. 5. Procedures of the Violations Bureau. The ~~County Court-district court~~ shall supervise and the clerk shall operate the misdemeanor violations bureaus. The ~~County Court-district court~~ shall, consistent with these rules, issue rules governing the duties and operation of the bureaus. The clerk shall assign one or more deputy clerks to discharge and perform the duties of the bureaus."

70. Comments on Rule 23.01.

To conform to the proposed amendment of Rule 23.01, amend the second sentence of the second paragraph of the comments on Rule 23 as follows:

"By that statute a petty misdemeanor refers solely to a statutory violation punishable only by a fine of not more than ~~\$100~~ the specified amount."



71. Comments on Rule 23.02.

To conform to the proposed amendment of Rule 23.01, amend the fourth paragraph of the comments on Rule 23 as follows:

"Rule 23.02 providing that a conviction is deemed to be for a petty misdemeanor if the sentence imposed is not more than \$100 or such other amount as is set by the legislature as the maximum petty misdemeanor fine is similar to Minn. Stat. §609.13 which provides for the reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor. Rule 23.06 provides that a petty misdemeanor shall not be considered a crime."

72. Comments on Rule 23.04.

To conform to the proposed amendment of Rule 23.01, amend the third sentence of the eleventh paragraph as follows:

"If this procedure is followed, the defendant upon conviction may be fined no more than \$100-the amount specified in Rule 23.01 as the maximum fine for a petty misdemeanor."

73. Comments on Rule 23.03.

To conform to the proposed amendments of Rule 23.03 concerning court unification, amend the fifth and sixth paragraph of the comments on Rule 23 as follows:

"Rule 23.03 gives the court authority to establish violations bureaus and establishes certain procedures for such bureaus. Rule 23.03, subd. 1 is similar to Minn. Stat. §487.28, subd. 1 except that the violations bureau under the rule may handle any misdemeanor designated by the court and not just traffic and ordinance violations. ~~Since "County Court" under Rule 1.01 also includes municipal courts, violations bureaus may be established by the Hennepin and Ramsey County Municipal Courts as well as by the county courts governed by Minn. Stat. Ch. 487. See Minn. Stat. §§ 488A.08, 488A.25, and 487.28 (1981) as to the establishment of violations bureaus in Hennepin County, Ramsey County, and all other counties, respectively.~~

For the purpose of providing uniformity in the fines imposed for certain misdemeanors throughout the state, Rule 23.03, subd. 2(1) provides that the ~~county and municipal district~~ court judges of the state shall adopt a uniform fine schedule setting forth the fines to be paid to violations bureaus for all statutory petty misdemeanors and for such other statutory misdemeanors as the judges select. As necessary, the judges should revise the schedule to assure that the fines thereon are appropriate and to add new

offenses. For the purpose of adopting a uniform schedule, the President of the Minnesota ~~County~~-Judges' Association or the successor organization to that association shall call such meetings as are necessary of all ~~county-and-municipal~~ district court judges of the state."

74. Comments on Rule 23.03.

To conform to the proposed amendments of Rule 23.03 concerning court unification, amend the third sentence of the seventh paragraph of the comments on Rule 23 as follows:

"The county fine schedule should be established by each ~~individual-county~~-the district court and may specify a fine for any misdemeanor, including ordinance violations, whether or not included on the uniform fine schedule."

75. Comments on Rule 24.

To conform to the proposed amendments concerning court unification, amend the fourth sentence of the second paragraph as follows:

"The place of filing a complaint is provided for by Rule 2.01; the defendant's first appearance in ~~county-or municipal~~-court (a) following an arrest upon a complaint by Rules 3.02, subd. 2 and 4.01 or (b) following an arrest without a warrant by Rule 4.02, subd. 5; the defendant's ~~initial~~ appearance in the district court following a complaint (Rule 8) by Rule 5.03."

76. Rule 25.01. Pretrial Hearings - Motion to Exclude Public.

To incorporate the procedures established in Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) amend this rule as follows:

"Rule 25.01. Pretrial Hearings - Motion to Exclude Public

The following rules shall govern the issuance of any court order excluding the public from any pretrial hearing and restricting access to any transcripts or orders developed from such closed pretrial hearings.

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 be held ~~in-chambers-or-otherwise~~ closed to the public 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 his-right-to 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. With-the-consent-of the-defendant,-the-court-may-make-such-an-exclusion order-on-its-own-motion-or-at-the-suggestion-of-the prosecution. 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.

Subd. 2. Notice to Adverse Counsel.

If, prior to trial, counsel for either the prosecution or the defense has evidence that he believes may be the subject of an exclusionary order, he 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.

Subd. 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 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.

Subd. 4. Hearing.

At the hearing held pursuant to such notice, the trial court shall advise all present that evidence has been disclosed to it that may be the subject of a closure order and shall give the public and the news media an opportunity to suggest any alternatives to a restrictive order.

Subd. 5. Findings of Fact.

No exclusion order shall issue without the court setting forth the reasons therefor--~~Any person aggrieved may petition the Supreme Court for immediate review of the order granting or denying exclusion, in written findings of fact. Such findings must include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate. Any matter to be decided which does not present the risk of revealing inadmissible, prejudicial information shall be decided openly and on the record.~~

Subd. 6. Records.

Whenever under this rule all or part of any pretrial hearing is ~~held in chambers or otherwise closed~~ to the public, a complete record of ~~the those~~ proceedings shall be made and upon request shall be transcribed at public expense and filed and shall be available to the public following the completion of the trial or disposition of the case without trial. For the protection of innocent persons, the court may order that names be deleted or substitutions made therefor in the record.

Subd. 7. Appellate Review.

Anyone represented at the hearing or aggrieved by an order granting or denying an exclusion or restrictive order under this rule may petition the Court of Appeals for review, which shall be the exclusive method for obtaining review.

The Court of Appeals shall determine upon the hearing record whether the moving party sustained the burden of justifying the order under the conditions specified in this rule, and may reverse, affirm, or modify the order issued."

77. Rule 25.03. Restrictive Orders.

To provide a uniform standard for both restrictive orders under Rule 25.03 and closure orders under Rule 25.01, amend Rule 25.03 as follows:

"Rule 25.03. Restrictive Orders

Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04 the following rule shall govern the issuance of any court order restricting public access to public records relating to a criminal proceeding:

Subd. 1. Motion and Notice.

(a) A restrictive order may be issued only upon motion and after notice and hearing.

(b) Notice of the hearing shall be given in the time and manner and to such interested persons, including the news media, as the court may direct, provided that the 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 the matter.

Subd. 2. Hearing.

(a) At the hearing, the moving party shall have the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 3.

(b) The public and news media shall have a right to be represented at the hearing and to present evidence and arguments in support of or in opposition to the motion and to suggest any alternatives to the restrictive order.

(c) A verbatim record shall be made of the hearing.

Subd. 3. Grounds for Restrictive Order.

The court may issue a restrictive order under this rule only if the court concludes on the basis of the evidence presented at the hearing that:

(a) Access to such public records will present a ~~clear-and-present-danger-of-substantially~~ substantial likelihood of interfering with the fair and impartial administration of justice.

(b) All reasonable alternatives to the restrictive order are inadequate.

The restrictive order shall be no broader than is necessary to protect against the potential interference with the fair and impartial administration of justice.

Subd. 4. Findings of Fact.

The Court shall make written findings of the facts and statement of the reasons supporting the conclusions upon which an order granting or denying the motion is based. If the restrictive order is granted, the

findings of fact shall include a review of the alternatives to the restrictive order and a statement of why the court believes such alternatives to be inadequate.

Subd. 5. Appellate Review.

(a) Anyone represented at the hearing or aggrieved by an order granting or denying a restrictive order may petition the ~~Supreme-Court~~ Court of Appeals for review, which shall be the exclusive method for obtaining review.

(b) The ~~Supreme-Court~~ Court of Appeals shall determine upon the hearing record whether the moving party sustained the burden of justifying the restrictive order under the conditions specified in subd. 3 of this rule, and the ~~Supreme-Court~~ Court of Appeals may reverse, affirm, or modify the order issued."

78. Comments on Rule 25.01.

To conform to the proposed amendment of Rule 25.01, amend the second and third paragraphs of the comments on Rule 25 as follows:

"Rule 25.01 (Pretrial Hearings--Motion to Exclude Public) ~~comes from ABA Standards, Fair Trial and Free Press, 3.1 (Approved Draft, 1968)~~ setting forth the procedure and standard for excluding the public from pretrial hearings in based on Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983). The motion to exclude the public from pretrial hearings under this rule shall not be granted unless the court determines that there is a substantial likelihood of interference with an overriding interest. For a defendant that would include interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument adduced at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the

situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

Whenever the public is excluded, a record of the proceedings shall be kept and made available to the public, ~~unless the court orders otherwise,~~ following the completion of the trial or disposition of the case without trial. For the protection of innocent persons, the court may order that names be deleted or substitutions therefor be made."

79. Comments to Rule 25.03.

To conform to the proposed amendment of Rule 25.03, amend the eighth paragraph of the Comments on Rule 25 as follows:

"It is anticipated that Rule 25.03 will be utilized only "in exceptional cases" involving serious crimes. See Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254, 257, and note 7 (Minn. 1977). The procedure required by this rule is based upon Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) as well as Northwest Publications, Inc. v. Anderson, 359 N.W.2d 254 (Minn. 1977). A restrictive order may be issued under Rule 25.03 only if the Court finds that access to the records will present a substantial likelihood of interfering with the fair and impartial administration of justice. This standard is similar to that provided by Rule 25.01 governing closure of pretrial hearings and Rule 26.03, subd. 6 governing closure of trial proceedings. A more restrictive standard governing access to such records would be anomalous in light of Rule 25.01 and Rule 26.03, subd. 6. Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case. This is in accord with ABA Standards, Fair Trial and Free Press, 8-3.1 (Approved Draft, 1982) which recommends that no rule of court be promulgated authorizing any such restrictions. The requirement in Rule 25.03, subd. 3 that any restrictive order be no broader than necessary is taken from Waller v. Georgia, 467 U.S. 39, 104 S. Ct. 2210, 81 L.Ed.2d 31 (1984)."

80. Rule 26.01, Subd. 1(1) Right to Jury Trial.

Because of court unification, amend part (a) of this rule as follows:

"(a) Offenses Punishable by Incarceration. A defendant shall be entitled to a jury trial in any prosecution for an offense punishable by incarceration. ~~Except as otherwise provided by these rules, trials for misdemeanors shall be in the county court. Trials for felonies and gross misdemeanors~~ All trials shall be in the district court."

81. Rule 26.02, Subd. 1. Selection and Qualifications.

Because of court unification, delete the last sentence of this rule as follows:

~~"The same jury list and panel may be used for both the district and county court."~~

82. Rule 26.03, Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury.

To require the same procedural protection for closure of trial proceedings as are required by Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) for pretrial hearings, amend this rule as follows:

"Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury.

The following rules shall govern the issuance of any court order excluding the public from any portion of the trial that takes place outside the presence of the jury and restricting access to any transcripts or orders developed from such closed portions of the trial.

(1) Grounds for Exclusion of Public. If the jury is not sequestered, the defendant, the prosecuting attorney or the court may move 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 the defendant's right to 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. ~~With the consent of the defendant, the court may take such action on its own motion or at the~~



~~suggestion of the prosecution.~~ 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.

(2) Notice to Adverse Counsel. If, during trial, counsel for either the prosecution or the defense has evidence that he believes may be the subject of an exclusionary order, he 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.

(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 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.

(4) Hearing. At the hearing held pursuant to such notice, the trial court shall advise all present that evidence has been disclosed to it that may be the subject of a closure order and shall give the public and the news media an opportunity to suggest any alternatives to a restrictive order.

(5) Findings of Fact. No exclusion order shall issue without the court setting forth the reasons therefor. ~~Any person aggrieved may petition the Court of Appeals for immediate review of the order granting or denying exclusion.~~ in written findings of fact. Such findings must include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate. Any matter to be decided which does not present the risk of revealing inadmissible, prejudicial information shall be decided openly and on the record.

(6) Records. Whenever under this rule part of the proceedings are ~~held in chambers or otherwise~~ closed to

the public, a complete record of ~~the~~ those proceedings shall be made and upon request shall be transcribed at public expense and filed and shall be available to the public following the completion of the trial. For the protection of innocent persons, the court may order that names be deleted or substitutions therefor be made in the record.

(7) Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying an exclusion or restrictive order under this rule may petition the Court of Appeals for review, which shall be the exclusive method for obtaining review.

The Court of Appeals shall determine upon the hearing record whether the moving party sustained the burden of justifying the order under the conditions specified in this rule, and may reverse, affirm, or modify the order issued."

83. Comments on Rule 26.01, Subd. 1.

To conform to the proposed amendment of Rule 26.01, subd. 1 concerning court unification, amend the first sentence of the seventh paragraph of the comments on Rule 26 as follows:

"Under Rule 26.01, subd. 1(1)(a) defendants prosecuted in the municipal courts of Hennepin and Ramsey County as well as those prosecuted in the county courts governed by Minn. Stat., Ch. 487 for misdemeanors will have the right to a jury trial if and only if the misdemeanor charged is punishable by incarceration."

84. Comments on Rule 26.01, Subd. 1(4).

To conform to a statutory change governing the number of jurors, amend the third sentence of the thirteenth paragraph of the comments on Rule 26 as follows:

"The number of jurors required by law for felonies and gross misdemeanors is 12 and for gross misdemeanors is 6. (Minn. Stat. §593.01 (1971-1986).)"

85. Comments on Rule 26.03, Subd. 6.

To conform to the proposed amendment of Rule 26.03, subd. 6, amend the paragraph of the comments concerning that rule as follows:

"Rule 26.03, subd. 6 (Exclusion of Public From Hearing or Arguments Outside the Presence of the Jury) is adapted from ABA Standards, Fair Trial and Free Press

~~3.5(d)-(Approved-Draft,-1968)-~~ based on Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) which established similar procedures for excluding the public from pretrial hearings. See the Comments to Rule 25.01 concerning those procedures. When the record of proceeding from which the public is excluded is made available, the court may order that names be deleted or substitutions therefor made for the protection of innocent persons. This rule for exclusion of the public is not intended to interfere with the power of the court, in connection with any hearing held outside the presence of the jury, to caution those present that dissemination of specified information by any means of public communication, prior to the rendering of the verdict, may jeopardize right to a fair trial by an impartial jury. (See ABA Standards, Fair Trial and Free Press, 3.5(d) (Approved Draft, 1968).) An agreement by the news media not to publicize matters heard until after completion of the trial could afford the basis for a determination by the court that there is no substantial likelihood of interfering with an overriding interest, including the defendant's right to a fair trial, by permitting the news media or the public to be present. Re provision for appellate review, see comment to Rule 25.01."

86. Rule 27.03, Subd. 4. Imposition of Sentence.

To require the prompt filing of any written sentencing guideline departure reports, amend Part (C) of this rule as follows:

"(C) For felony cases if the sentence imposed deviates departs from the sentencing guidelines applicable to the case, the court shall state, on into the record, findings of fact as to the reasons for departure and shall forward, or cause to be forwarded, to the sentencing guidelines commission a copy of the transcript of that portion of the record or a completed departure form as provided by the commission. Such departure report shall be filed with the commission and the clerk of court for the trial court within 15 days after the date of sentencing."

87. Rule 27.03, subd. 6. Record.

To assure that a sentencing transcript is available in time to prepare an informal letter brief for a sentencing appeal under Rule 28.05, amend this rule as follows:

"Subd. 6. Record. A verbatim record of the sentencing proceedings shall be made. In felony and gross misdemeanor cases any verbatim record made in accordance with this rule shall be transcribed and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney."

88. Rule 27.04, Subd. 1(2) Contents of Warrant and Summons.

Because of court unification, amend the first sentence of this rule as follows:

"Both the warrant and summons shall contain the name of the probationer, a description of the probationary sentence sought to be revoked, the signature of the issuing judge or judicial officer of the ~~county-or-district~~ court, and shall be accompanied by the written report upon which it was based."

89. Rule 28.01, Subd. 1. Appeals from County and District Court.

Because of court unification, amend this rule as follows:

"Subd. 1. Appeals from ~~County-and-District~~ Court. Rule 28 governs the procedure for appeals in misdemeanor, gross misdemeanor, and felony cases from the district courts ~~and county-courts~~ to the Court of Appeals except for cases in which the defendant has been convicted of murder in the first degree."

90. Rule 28.02, Subd. 1. Review by Appeal.

Because of court unification, amend this rule as follows:

"Subd. 1. Review by Appeal. Except as provided by law for the issuance of the extraordinary writs and for the Post-Conviction Remedy, a defendant may obtain review of orders and rulings of the ~~county-or-district~~ courts by the Court of Appeals only by appeal as provided by these rules. Writs of error are abolished."

91. Rule 28.04, Subd. 2(2) Notice of Appeal.

To clarify the meaning of this rule, amend the first sentence of the rule as follows:

"Within five (5) days after entry of the order ~~staying-the proceedings-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."

92. Rule 28.04, Subd. 2(6) Attorney's Fees.

To assure that any attorney's fees ordered by the Court of Appeals on a prosecution appeal are paid by the governmental unit responsible for the appeal and not always just by the "county", amend part (6) of this rule as follows:

"(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 county-in-which the-prosecution-was-commenced-governmental unit responsible for the prosecution involved."

93. Comments on Rule 28.04, Subd. 2(6).

To conform to the proposed amendment of Rule 28.04, subd. 2(6), delete the third paragraph from the end of the comments on Rule 28 as follows:

~~"Rule 28.04, subd. 2(6) (Attorney's Fees), providing for payment of attorney's fees by the county in which the prosecution was commenced assumes that the prosecution was commenced in a proper county."~~

94. Comments on Rule 28.05, Subd. 1(1).

To clarify the procedure to be followed on a combined appeal of a sentence and conviction when the defendant later determines not to challenge the conviction, amend the comments by adding the following paragraph just before the last paragraph to the comments on Rule 28:

"Under Rule 28.05, subd. 1(1) a defendant may combine an appeal of his sentence with an appeal of the judgment of conviction. If the defendant later determines not to challenge the conviction, the sentence alone may still be challenged on the appeal and the more formal procedural requirements of Rule 28.02 then apply rather than that of Rule 28.05."

95. Rule 29.02, Subd. 1. Appeals in First Degree Murder Cases.

Because of court unification, amend the last sentence of this rule as follows:

"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 ~~county-court~~ ~~or-district~~ court to the Supreme Court."

96. Rule 29.04, Subd. 10(3) Attorney's fees.

To assure that any attorney's fees ordered by the Supreme Court on a prosecution appeal are paid by the governmental unit responsible for the appeal and not always just by the "county", amend part (3) of this rule as follows:

"(3) Attorney's ~~fees~~ Fees. Reasonable attorney's fees and costs incurred shall be allowed to the defendant on an appeal to the Supreme Court by the prosecuting attorney in a case originally appealed by the prosecuting attorney to the Court of Appeals pursuant to Rule 28.04. Such fees shall be paid by the ~~county~~ in which the prosecution was commenced governmental unit responsible for the prosecution involved."

97. RULE 35. COURTS AND CLERKS.

Because of court unification, amend the first sentence of this rule as follows:

"The district ~~and-county~~-courts shall be deemed open at all times for the purpose of filing any proper paper, of issuing and returning or certifying process and of making motions and orders."

C1-84-2137  
SUPPLEMENTAL NOTICE

JUNE 25, 1987 PUBLIC HEARING  
TO CONSIDER ADOPTION OF  
AMENDMENTS TO THE RULES  
OF CRIMINAL PROCEDURE

Due to recent legislative enactment, the Minnesota Supreme Court will be considering an additional amendment to the Rules of Criminal Procedure at the public hearing on June 25, 1987. The proposal would amend Rule 26.03, subdivision 11 substantially as follows:

"

\* \* \*

- 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 shall be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

\* \* \*

"

The public hearing will be held as scheduled on June 25, 1987, at 11:00 a.m. in the Courtroom of the Supreme Court in the State Capitol in St. Paul. As set forth in the earlier order of the court, the deadline for filing written statements and requesting oral argument is June 12, 1987.

OFFICE OF  
APPELLATE COURTS  
FILED

MAY 28 1987

WAYNE TSCHIMPERLE  
CLERK

(between ¶ 82 & 83)

Rule 26.03, subd. 11. Order of Jury Trial.

Amend this rule as follows:

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.

j k. The court shall charge the jury.

k l. The jury shall retire for deliberation and, if possible, render a verdict.



(between ¶ 85 & 86)

Comments on Rule 26.03, Subd. 11.

Amend the paragraph of comments concerning that rule as follows:

Rule 26.03, subd. 11 (Order of Jury Trial) substantially continues the order of trial under existing practice. (See Minn. Stat. § 546.11 (1971).) The order of closing argument, under sections "h" and "i" of this rule continues to be the same as under existing Minn. Stat. § 631.07 (1971) with the prosecution proceeding first and then the defendant "h", "i", and "j" of this rule reflects a change. The prosecution argues first, then the defendant. The court may then permit the prosecution limited rebuttal, if the defense in its argument made a misstatement of law or fact or a statement that is inflammatory or prejudicial.

C1-84-2137  
AMENDED SUPPLEMENTAL NOTICE

JUNE 25, 1987 PUBLIC HEARING  
TO CONSIDER ADOPTION OF  
AMENDMENTS TO THE RULES  
OF CRIMINAL PROCEDURE

Recent legislation regarding the order of final argument also affects the issue of joint trials. Therefore, at the June 25, 1987 public hearing, the Minnesota Supreme Court will also consider amending the Rules of Criminal Procedure in conformance with the following legislative enactment:

"When two or more defendants are jointly charged with a felony, they may be tried separately or jointly in the discretion of the court. In making its determination on whether to order joinder or separate trials, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to the defendant, and the interests of justice."

The public hearing will be held as scheduled on June 25, 1987, at 11:00 a.m. in the Courtroom of the Supreme Court in the State Capitol in St. Paul. As set forth in the earlier order of the court, the deadline for filing written statements and requesting oral argument is June 12, 1987.

OFFICE OF  
APPELLATE COURTS  
FILED

MAY 29 1987

WAYNE TSCHIMPERLE  
CLERK

(between present ¶ 52 & 53)

Rule 17.03, Subd. 2. Joinder of Defendants.

Amend this rule as follows:

(1) Felony and Gross Misdemeanor Cases. When two or more defendants shall be are jointly charged with a felony, they shall be tried separately provided; however, upon written motion, the court in the interests of justice and not solely related to economy of time or exepense may order a joint trial for any two or more said defendants they may be tried separately or jointly in the discretion of the court. In making its determination on whether to order joinder or separate trials, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to the defendant, and the interests of justice. In cases other than felonies, defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases any one or more of said defendants may be convicted or acquitted.

(1) Misdemeanor Cases. Defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases, any one or more of said defendants may be convicted or acquitted.

**Amendments to Rules of Criminal Procedure.**

**Comments on Rule 17.03, subd. 2:**

**Delete entirely the sixteenth paragraph of the comments on Rule 17.**