

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING
COMMENTS ON PROPOSED AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE**

The Supreme Court Advisory Committee on Rules of Criminal Procedure filed a report on October 24, 2005, recommending amendments to the Rules of Criminal Procedure. This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the report. A copy of the report is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support or opposition to the proposed amendments shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before December 9, 2005.

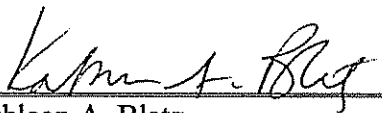
Dated: October 28 2005

BY THE COURT:

OFFICE OF
APPELLATE COURTS

OCT 28 2005

FILED


Kathleen A. Blatz
Chief Justice

C1-84-2137
STATE OF MINNESOTA
IN SUPREME COURT

In Re:

Supreme Court Advisory Committee
On Rules of Criminal Procedure

REPORT WITH PROPOSED AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE

October 24, 2005

Hon. Robert Lynn, Chair

Carolyn Bell Beckman, Saint Paul
Leonardo Castro, Minneapolis
James W. Donehower, Detroit Lakes
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Theodora Gaitas, Minneapolis
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Kathryn M. Keena, Hastings
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Hon. Heather L. Sweetland, Duluth

Hon. Paul H. Anderson
Supreme Court Liaison

Philip Marron, Minneapolis
Reporter

C. Paul Jones, Minneapolis
Counselor

Kelly Mitchell, Saint Paul
Staff Attorney

**REPORT TO THE MINNESOTA SUPREME COURT
FROM THE SUPREME COURT
ADVISORY COMMITTEE
ON RULES OF
CRIMINAL PROCEDURE
October 24, 2005**

As directed by the Supreme Court, the Advisory Committee on Rules of Criminal Procedure has met regularly and continued to monitor the rules and to hear and accept comments concerning them. The committee has reviewed those matters referred to it by the Supreme Court as well as any comments or suggestions received from the bench and bar and other judicial committees and task forces. Based on this review the Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the Supreme Court adopt the Proposed Amendments to the Minnesota Rules of Criminal Procedure submitted herewith. A brief summary of those rule amendments follows:

RULE 6.03. VIOLATION OF CONDITIONS OF RELEASE

Rule 6.03 does not currently permit probation officers or court services personnel to apply to the court for issuance of a warrant or summons for a defendant's alleged violation of conditions of release. The committee proposes amending Rule 6.03 to permit that and also to clarify the presumption in favor of issuing a summons rather than a warrant unless the specified grounds exist for issuance of a warrant as set forth in the rule.

AMENDMENTS TO CONFORM TO THE ELIMINATION OF MANDATORY

GUILTY PLEA AND SENTENCING TRANSCRIPTS

On October 31, 2003, this court amended the rules to eliminate the requirement that guilty plea and sentencing transcripts be prepared automatically in all felony and gross misdemeanor cases. In place of that, this court mandated the use of a uniform sentencing order containing all necessary sentencing terms. The elimination of these mandatory transcripts requires some additional revisions of the rules related to sentencing appeals because those rules previously assumed the existence of a sentencing transcript by the time such an appeal would be filed. The committee therefore proposes amendments in Rules 15.09, 27.03, 28.02 and 28.05 to correct this deficiency by providing a procedure for ordering any necessary transcripts and by providing an appropriate briefing schedule after delivery of the necessary transcripts. The committee also proposes extensive revisions to the Plea Agreement form contained in Appendix D to Rule 15. These revisions in Appendix D are proposed so that the plea agreement will be more comprehensive and include those elements expected to be in the uniform sentencing order. The more extensive plea agreement form will also make it less likely that unanticipated issues will arise at the sentencing hearing. Additionally, as directed by this court in its order of October 31, 2003, the committee proposes various amendments in the comments to the rules to reflect the elimination of these mandatory automatic transcripts.

PROVISION OF COURT RECORDS TO STATE PUBLIC DEFENDER

The committee proposes amending Rule 28.02, subd. 5(8) and (9) to clarify that court administrators must furnish to the State Public Defender without charge copies of any documents in the court file. This is in accord with Minn. Stat. § 611.271.

ACCESS TO PREVIOUS RULE 20 EVALUATIONS

The committee proposes amending Rule 20.01, subd. 2 to clarify that an examiner conducting an evaluation under that rule may obtain and review reports of any prior examinations conducted under Rule 20.

FORMS

The committee also recommends minor changes in Form 4A, Gross Misdemeanor Charging by Tab Charge, and Form 34, Notice of Appeal by Prosecuting Attorney to the Court of Appeals from Pretrial Order(s) of the District Court, to conform to recent changes in the applicable statutes and addresses.

Dated: _____

Respectfully Submitted,

Judge Robert Lynn, Chair
Supreme Court Advisory Committee
on Rules of Criminal Procedure

**PROPOSED AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE
October 24, 2005**

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

1. Rule 6.03. Violation of Conditions of Release.

Amend this rule as follows:

Rule 6.03. Violation of Conditions of Release

Subd. 1a. ~~Warrant~~ Summons. Upon an application of the prosecuting attorney, ~~court services or probation officer~~ alleging probable cause that a defendant has violated the conditions of release, the judge, judicial officer or court that released the defendant may issue a ~~warrant directing that the defendant be arrested and taken forthwith before such judge, judicial officer or court.~~ A summons directing the defendant to appear before such judge, judicial officer or court at a specified time. A summons shall be issued instead of a warrant unless a warrant is authorized under subdivision 1b of this rule it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown.

Subd. 1b. Warrant. Upon application of the prosecuting attorney, court services or probation officer alleging probable cause that a defendant has violated the conditions of release, the judge, judicial officer or court that released the defendant may issue a warrant instead of a summons if it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to a summons, or that the continued release of the defendant will endanger the safety of any person or the community, or that the location of the defendant is unknown. The warrant shall direct that the defendant be arrested and taken forthwith before such judge, judicial officer or court.

Subd. 2. Arrest Without Warrant. A ~~When~~ a law enforcement officer ~~having~~ has probable cause to believe that a released defendant has violated the conditions of release and it reasonably appears that the defendant's continued release will endanger the safety of any person or the community, the officer may, if it is impracticable to secure a warrant or summons as provided in this rule, arrest the defendant and take the defendant forthwith before such judge, judicial officer or court if it is impracticable to secure a warrant or summons as provided in this rule. ~~In a~~

~~misdemeanor case, a citation shall be issued in lieu of an arrest or continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or that there is a substantial likelihood that the defendant will fail to respond to the citation.~~

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

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

2. Comments on Rule 6.03.

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

Rule 6.03 prescribes the procedures to be followed upon violation of conditions of release. The rule is substantially in accord with the ABA Standards, Pre-Trial Release, ~~5.6, 5.7, 5.8~~ 10-5.6 (Approved Draft, 1968-2002), except that by Rule 6.03, subd. 3, the court is not authorized to revoke the defendant's release without setting bail because such action is not permitted under Minn. Const. Art. 1, § 5. The court must continue or revise the release conditions, governed by the considerations set forth in Rule 6.02, subds. 1 and 2. Under those rules, the court may increase the defendant's bail. If the defendant is unable to post the increased bail or to meet alternative conditions of release, the defendant may be kept in custody. Also, Rule 6.03 requires the issuance of a summons rather than a warrant ~~and the issuance of a citation rather than an arrest under the same circumstances similar to those upon which they would be required under Rules 3.01 and 6.01, respectively.~~ Rule 6.03, subd. 2 permits a warrantless arrest for violating conditions of release if it reasonably appears that the defendant's continued release will endanger the safety of any person or the community, but only if it is impracticable to secure a warrant or summons as provided by the rule. Rule 6.03, subd. 3 requires only an informal hearing and does not require a showing of willful default, but leaves it to the discretion of the court to determine under all of the circumstances whether to continue or revise the conditions of possible release.

3. Rule 15.09. Record of Proceedings.

Amend Rule 15.09 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. If a written petition to enter a plea of guilty is submitted to the court, it shall be in the appropriate form as set forth in the Appendices to this rule. The defendant, prosecution, or 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.

4. Comments on Rule 15.09.

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

Rule 15.09, requiring a record of the proceedings on a plea of guilty, is in accord with ABA Standards, Pleas of Guilty, 1.7 (Approved Draft, 1968). In misdemeanor cases, the rule provides the alternative, however, of filing a petition to enter a guilty plea as provided for in Rule 15.03, subd. 2 and in the Appendix B to Rule 15. This provision for either a verbatim record or a petition is included to satisfy the constitutional requirement that a plea to a misdemeanor offense punishable by incarceration must be shown on the record to be knowingly and voluntarily entered. See State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973); Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); and Mills v. Municipal Court, 10 C.3d 288, 110 Cal.Rptr. 329, 515 P.2d 273 (1973). The verbatim record may be made by a court reporter or recording equipment (see Minn. Stat. § 487.11, subd. 2 (1971)). ~~In felony and gross misdemeanor cases, any verbatim record made pursuant to this rule shall be transcribed. In misdemeanor cases, any such~~ The verbatim record need not be transcribed unless requested by the court, the defendant, or the prosecuting attorney, or any other person. If a transcript is requested, it then must be completed within 30 days after the request is made in writing and satisfactory arrangements are made for payment of the transcript.

5. Rule 20.01, subd. 2. Proceedings.

Amend Part (3) of Rule 20.01, subd. 2 as follows:

(3) *Medical Examination.* The court shall appoint at least one examiner as defined in the Minnesota Commitment Act of 1982, Minn. Stat. Ch. 253B, or successor statute to examine the defendant and to report to the court on the defendant's mental condition.

If the defendant is otherwise entitled to release, confinement for the examination may not be ordered if the examination can be done adequately on an outpatient basis. The court may make appearance for the outpatient examination a condition of the defendant's release. If the examination cannot be adequately done on an outpatient basis or if the defendant is not otherwise entitled to be released, the court may order the defendant confined in a state mental hospital or other suitable hospital or facility for the purpose of such examination for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted to observe the examination and to also examine the defendant. Both the examiner appointed by the court and any examiner retained by the defense or prosecuting attorney may obtain and review the report of any prior examination conducted under this rule. The court shall further direct that if any of the mental-health professionals appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention, the mental-health professional shall promptly notify the prosecuting attorney, defense counsel, and the court.

6. Comments on Rule 20.01, subd. 2.

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

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

otherwise be entitled to release from custody during the proceedings. In conducting the examination, the rule provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rule 20.01 and Rule 20.02. This express authorization which was proposed in 2005 is intended merely to clarify the rule and not to change it. The provision in Rule 20.01, subd. 2(3) for the mental-health professionals conducting the examination to promptly contact the court and counsel upon concluding the defendant poses any of the serious imminent risks specified is taken from Unif.R.Crim.P. 464(e)(6) (1987) and ABA Standards for Criminal Justice 7-3.2(b) (1985). The requirements for the examination report as set forth in Rule 20.01, subd. 2(4) are in substantial compliance with Unif.R.Crim.P. 464(f) (1987) and ABA Standards for Criminal Justice 7-4.5 (1985). The examiners appointed by the court to examine a defendant for the purpose of determining competency to proceed or for the purpose of a mental illness or mental deficiency defense must have the same qualifications as examiners appointed for civil commitment proceedings. Under Minn. Stat. § 253B.02, subd. 7 (1988) that means the examiner must be "a licensed physician or a licensed consulting psychologist, knowledgeable, trained and practicing in the diagnosis and treatment of the alleged impairment". If simultaneous examinations are ordered pursuant to Rule 20.02, subd. 7, the examiner appointed should then be qualified to provide a report for all the necessary purposes

7. Rule 27.03, subd. 4. Imposition of Sentence.

Amend Part (E) of Rule 27.03, subd.4 as follows:

(E) If the court elects to stay imposition or execution of sentence, ~~and:~~

(1) The court shall state the precise term during which imposition or execution will be stayed.

~~(2) Requires a period of probation in~~ In felony cases, the court shall advise the defendant that non-custodial probation time may not be credited against the sentence in the event that probation is ultimately revoked and sentence executed.

~~(23)~~ If noncriminal conduct could result in revocation, the trial court should advise the defendant so that the defendant can be reasonably able to tell what lawful acts are prohibited.

~~(34)~~ A written copy of the conditions of probation should be given to the defendant at the time of sentencing or soon thereafter.

~~(45)~~ The defendant should be told that in the event of a disagreement with the probation agent as to the terms and conditions of probation, the defendant can return to the court for clarification if necessary.

8. Rule 27.03, subd. 6. Record.

Amend Part (A) of Rule 27.03, subd. 6 as follows:

(A) A verbatim record of the sentencing proceedings shall be made. The defendant, prosecution, or 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.

9. Rule 27.04, subd. 3. Revocation Hearing.

Amend Part (5) of Rule 27.04, subd. 3 as follows:

(5) The probationer or the prosecution may appeal from the court's decision. The appeal shall proceed according to the procedure provided for appeal from a sentence by Rule 28.05, except that if appellant files a notice of appeal and order for transcript within 90 days of the revocation hearing, appellant's brief shall be identified as a probation revocation appeal brief and shall be due within 30 days of the delivery of the transcript. Preparation of the transcript shall be governed by the Minnesota Rules of Civil Appellate Procedure. All other procedures are governed by Rule 28.05.

10. Comments on Rule 27.

Amend the twenty-first paragraph of the comments on Rule 27 as follows:

Minn. Stat. § 244.10, subd. 2 requires written findings of fact as to the reasons for departure from the sentencing guidelines. The court's statement into the record under Rule 27.03, subd. 4(C) should satisfy this requirement, but the rule further requires that the reasons for departure must be stated in a sentencing order or in a departure report attached to the sentencing order. Whichever document is used, it must be filed with the sentencing guidelines commission within 15 days of the date of the sentencing.

11. Comments on Rule 27.03, subd. 4(E).

Amend the twenty-fourth paragraph of the comments on Rule 27 as follows:

As to part (E) ~~(2)~~(3) of Rule 27.03, subd. 4, the sentencing guidelines indicate that revocation of a stayed sentence should not be based on merely technical violations, and a court should instead use expanded and more onerous conditions of probation for such technical violations. Training Manual III. B. The Minnesota Supreme Court has stated that a trial court should refer to the following ABA Standard in determining whether to revoke probation:

Grounds for and alternatives to probation revocation.

(a) Violation of a condition is both a necessary and a sufficient ground for the revocation of probation. Revocation followed by imprisonment should not be the disposition, however, unless the court finds on the basis of the original offense and the intervening conduct of the offender that:

(i) confinement is necessary to protect the public from further criminal activity by the offender; or

(ii) the offender is in need of correctional treatment which can most effectively be provided if the offender is confined; or

*(iii) it would unduly depreciate the seriousness of the violation if probation were not revoked. ABA Standards for Criminal Justice, Probation § 5.1(a) (Approved Draft, 1970) cited in *State v. Austin*, 295 N.W.2d 246 (Minn. 1980) and *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005).*

12. Comments on Rule 27.06.

Amend the twenty- sixth paragraph of the comments on Rule 27 as follows:

Rule 27.03, subd. 6 (Record), requiring a verbatim record of the sentencing proceedings, is in accord with ABA Standards, Sentencing Alternatives and Procedures, 5.7 (Approved Draft, 1968). ~~It does not affect~~ To the extent there is any conflict, the provisions of this rule supersede the provisions of Minn. Stat. § 243.49 (1971) relative to the transcription of trial court proceedings. If a transcript of the verbatim record is requested, it then must be completed within 30 days after the request is made in writing and satisfactory arrangements are made for payment of the transcript. See the Order of the Supreme Court, C1-84-2137, dated October 31, 2003, promulgating amendments to the Minnesota Rules of Criminal Procedure which abolished the mandatory automatic transcription of guilty plea and sentencing hearings in felony and gross misdemeanor cases. However, pursuant to Rule 27.03, subd. 6, the court is required to record in a sentencing order the information as specified by the rule. See forms 49A and 49B in the Criminal Forms following these rules for examples of the type of order required.

13. Rule 28.02, subd. 5. Proceedings in Forma Pauperis.

Amend Parts (8) and (9) of Rule 28.02, subd. 5 as follows:

(8) All ~~clerks of court~~ administrators shall furnish the office of the State Public Defender copies of any documents in their possession without charge ~~the prior payment of the fees therefor and shall bill the office of the State Public Defender for these copies after they have been furnished to the State Public Defender's office.~~

(9) All fees, ~~other than for furnishing copies of documents,~~ including appeal fees, hearing fees or filing fees, ordinarily charged by the clerks of the appellate courts or court administrators shall automatically be waived in cases in which the State Public Defender's office, or other public defender's office, represents the defendant in question. Such fees shall also be waived by the court upon a sufficient showing by any other attorney that the defendant is unable to pay the fees required.

14. Rule 28.02, subd. 5. Proceedings in Forma Pauperis.

Amend Part (12) of Rule 28.02, subd. 5 as follows:

(12) When a defendant is represented on appeal by the State Public Defender's office, the provision of Rule 110.02, subd. 2 of the Minnesota Rules of Civil Appellate Procedure concerning the certificate as to transcript shall not apply. Rather, in such cases, the State Public Defender upon ordering the transcript shall mail a copy of the written request for transcript to the ~~clerk~~ court administrator of the trial court, the clerk of the appellate courts, and the prosecuting attorney. The reporter shall promptly acknowledge receipt of said order and ~~his~~ acceptance of it, in writing, with copies to the ~~clerk~~ court administrator of the trial court, the clerk of the appellate courts, the State Public Defender, and the prosecuting attorney, ~~and in~~ In so doing, the reporter shall state the estimated number of pages of the transcript and the estimated completion date not to exceed 60 days, except for guilty plea and sentencing proceeding transcripts, which must be completed within 30 days. Upon delivery of the transcript, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

15. Rule 28.05, subd. 1. Procedure.

Amend Rule 28.05, subd. 1 as follows:

Subd. 1. Procedure. The following procedures shall apply to the appeal of a sentence imposed or stayed as permitted by these rules:

(1) *Notice of Appeal and Briefs.* Any party appealing a sentence shall file with the clerk of the appellate courts, within 90 days after judgment and sentencing, (a) a notice of appeal, ~~(b) 9 copies of an informal letter brief setting forth the arguments concerning the illegality or inappropriateness of the sentence, (c) and (b) an affidavit of service of the notice upon opposing counsel, the attorney general, and the clerk court administrator of the trial court in which the sentence was imposed or stayed, and in the case of prosecution appeals, the State Public Defender. If at the time of filing the notice of appeal all transcripts necessary for the appeal have already been transcribed, the party appealing the sentence shall file with the notice of appeal 9 copies of an informal letter brief, which shall be identified as a sentencing appeal brief, setting forth the arguments concerning the illegality or inappropriateness of the sentence along with~~ (d) an affidavit of service of the brief upon opposing counsel, the attorney general, and in the case of prosecution appeals, the State Public Defender. If at the time of filing the notice of appeal all transcripts necessary for the appeal have not yet been transcribed, the party appealing the sentence shall file with the notice of appeal a request for transcripts along with an affidavit of service of the request upon opposing counsel, the attorney general, the court administrator of the trial court in which the sentence was imposed or stayed, and in the case of prosecution appeals, the State Public Defender. Appellant's brief shall be identified as a sentencing appeal brief and shall be served and filed within 30 days of the delivery of the transcript. The clerk of the appellate courts shall not accept a notice of appeal from sentence unless accompanied by the requisite briefs or transcript request and affidavit of service. A defendant appealing the sentence and the judgment of conviction has the option of combining the two appeals into a single appeal; when this option is selected the procedures established by Rule 28.02 of these rules shall continue to apply. ~~The clerk of the appellate courts shall not accept a notice of appeal from sentence unless accompanied by the requisite briefs and affidavit of service.~~

(2) *Transmission of Record.* Upon receiving a copy of the notice of appeal, the court administrator for the trial court shall immediately forward to the clerk of the appellate courts (a) a transcript of the sentencing hearing, if any, (b) the sentencing order ~~or sentencing form~~ with the departure report, if any, attached, (c) the sentencing guidelines worksheet, and (d) any presentence investigation report

(3) *Respondent's Brief.* Within 10 days of service upon respondent of ~~the copy of the notice of appeal and~~ appellant's brief, a respondent choosing to respond shall serve an informal letter brief upon appellant and file with the clerk of the appellate courts 9 copies of such brief.

(4) *Other procedures.* The provisions of Rule 28.02, subd. 4(2) concerning the contents of the notice of appeal, Rule 28.02, subd. 5 concerning proceedings in forma pauperis, Rule 28.02, subd. 6 concerning stays, Rule 28.02, subd. 7 concerning the release of the defendant on appeal, and Rule 28.02, subd. 13 concerning oral argument shall apply to sentence appeals under this rule. The appellant may serve and file a reply brief within 5 days after service of the respondent's brief.

16. Comments on Rule 28.

Amend the eleventh paragraph of the comments on Rule 28 as follows:

Rule 28.02, subd. 5 also sets forth the method for temporarily making transcripts available to defendants seeking to proceed pro se or to file a supplemental brief on appeal. As to the right of a defendant to proceed pro se on appeal and to obtain a transcript for that purpose see State v. Seifert, 423 N.W.2d 368 (Minn. 1988). The procedure established by the rule contains elements of both the majority and dissenting opinions in that case. The rule allows a defendant to proceed pro se on appeal and to obtain a copy of any necessary transcript, but only after the State Public Defender has first had an opportunity to file a brief on behalf of the defendant and provided a copy of that brief to the defendant. This procedure satisfies the right of a defendant to proceed pro se while also assuring that any valid legal arguments will be brought to the attention of the appellate court by competent legal counsel. The State Public Defender's office will confer with the defendant and advise the defendant of the dangers and consequences of proceeding without legal counsel. If the defendant chooses to proceed, the State Public Defender's office will obtain a waiver of counsel from the defendant. If there is doubt as to the defendant's competency to waive counsel, the State Public Defender's office will assist in seeking an order from the district court determining the defendant's competency or incompetency. Upon receiving the transcript, the defendant must sign a receipt acknowledging the obligation to return the transcript to the State Public Defender's office when the time to file the supplementary brief expires. The transcript remains the property of the State Public Defender's office and any supplementary brief will not be accepted by the appellate court until the State Public Defender files a receipt with the appellate court indicating that the transcript has been returned. The recommended forms appended to the rules contain forms for waiver of counsel, request for determination of competency, and receipts of transcript by and from the defendant that satisfy the requirements of these rules. Part (7) sets forth the procedure through which an indigent person represented on appeal by private counsel obtains a transcript at public expense. It reflects the ruling and procedure set out in State v. Pederson, 600 N.W.2d 451 (Minn. 1999). Part (7) (c) addresses the

method of resolving disputes between the State Public Defender and the private attorney about what parts of the transcript should be ordered. The “appropriate” court for resolving disputes is the appellate court in which the appeal is filed. In the event an evidentiary hearing or extensive fact finding is required to resolve the dispute, the appellate court may order the issue be resolved by the district court in which the case was originally filed. In any case in which the entire transcript is not ordered, the procedure set forth in Rule 28.02, subd. 9 must be followed to permit the respondent to order additional parts of the transcript. Part (8), which requires court administrators to furnish to the State Public Defender copies of any documents in their possession without charge, is in accord with Minn. Stat. § 611.271. Under part (10) of Rule 28.02, subd. 5, the State Public Defender is not obligated to pay for transcripts or other expenses for a misdemeanor appeal if that office has not agreed under part (5) of that rule to represent the defendant in such a case.

17. Comments on Rule 28.

Amend the comments on Rule 28 by adding the following paragraph after the existing twenty-first paragraph of those comments:

Rule 28.04, subd. 2(2) requires that the prosecuting attorney serve the notice of appeal, the statement of the case, and the request for transcript on the defendant or defense counsel, the State Public Defender, the attorney general for the State of Minnesota, and the court administrator. Failure to timely serve the notice of appeal on the State Public Defender is a jurisdictional defect requiring dismissal of the appeal. State v. Barrett, 694 N.W.2d 783 (Minn. 2005).

18. Appendix D to Rule 15.

Amend Appendix D to Rule 15 to read as follows:

**APPENDIX D TO RULE 15
PLEA AGREEMENT**

STATE OF MINNESOTA
COUNTY OF _____

DISRTICT COURT
_____ JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

PLEA AGREEMENT

vs.

District Court File No. _____

Defendant.

1. Negotiation Status

- ___ The terms and conditions outlined in this agreement are a joint recommendation to the Court, but the Court is not bound to those terms and may impose different terms than those outlined in this agreement

- ___ The terms and conditions outlined in this negotiation are required by the agreement. If the Court will not sentence the defendant to the terms outlined in this agreement, either party may withdraw from the agreement.

2. Charges/Dismissals/Deferrals

- ___ The defendant will enter a plea of guilty to the following counts from the following files:

- ___ This case will be deferred pursuant to a pretrial diversion program. If the defendant successfully completes this program, the case will be dismissed.

- ___ This case will be deferred pursuant to 152.18 with conditions outlined in Section 4. If the defendant successfully completes those conditions, the case will be dismissed.

- ___ This matter will be continued for dismissal for a period of _____ on condition that the defendant abide by the following conditions: _____

- ___ Successful completion of probation will result in vacation of plea and dismissal of charge.

- ___ The following counts in this case or other criminal complaints will be dismissed:

- ___ This complaint will be amended to the lesser included offense(s) (or amended to the separate offense)of: _____

- ___ The State will not seek criminal charges arising out of the following conduct:

3. Level of Conviction

- ___ The parties agree to a misdemeanor or gross misdemeanor sentence of _____.

___ The parties agree to a stay of imposition of sentence for _____ years.

___ The parties agree to a stay of execution of sentence with a stayed sentence of _____ months and a stay for _____ years.

___ The parties agree to an executed sentence of _____ months.

___ The parties agree to a waiver of the mandatory minimums found in Minn. Stat. § 609.11.

___ **(If sentenced on multiple counts/files)** The prison term in this case is arrived at by the following sentences from the following counts/files to be served consecutively/concurrently (circle one)

___ The parties agree to whatever sentence is presumed by the Minnesota Sentencing Guidelines.

___ The parties agree this is a departure from the Minnesota Sentencing Guidelines (or other sentencing enhancement) based on the following factors: _____

___ The parties agree to a sentencing range of ___ months to ___ months.

___ **(DWI and Criminal Sexual Conduct cases)** If this is an executed sentence or if this sentence is ever executed, the parties understand that the defendant is subject to an extended term of conditional release for five or ten years after any term of imprisonment.

___ The parties also understand the defendant will be required to provide a biological sample for the State DNA database.

4. If this is a probationary sentence the parties agree to the following terms and conditions:

___ All terms of probation left to discretion of Court.

___ A probationary term of _____.

___ A workhouse or jail term of _____.

___ A workhouse or jail term not to exceed ('a cap' of) _____.

___ This term may be served intermittently on the following dates: _____.

___ The defendant will be eligible for Huber release for the following purposes: _____

___ Community service for _____ hours.

___ Sentence to Serve for _____ days.

___ Electronic home monitoring for _____ days.

___ Undergo any treatment-related evaluation recommended by Probation or the Department of Court Services.

___ Enter and successfully complete the following programs: _____

___ Enter and successfully complete any program recommended by Probation or the Department of Court Services.

___ No contact in person, by mail, by phone, by third party, or electronically with: _____

___ A fine of _____ and applicable surcharges.

___ Other: _____

5. Restitution

___ Defendant agrees to make restitution in the amount of _____.

___ Restitution to be determined by the Court.

6. Miscellaneous Provisions

Dated: _____

Defendant

Prosecuting Attorney

Defense Attorney

19. Form 4A. Gross Misdemeanor Charging by Tab Charge.

Amend Form 4A of the Criminal Forms following the Rules of Criminal Procedure to read as follows:

**FORM 4A. GROSS MISDEMEANOR
CHARGING BY TAB CHARGE**

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,
vs. _____
Defendant.

**TAB CHARGE PURSUANT TO
MINN. R. CRIM. P. 4.02, SUBD. 5(3)**
SJIS Number: _____

To: _____ County District Court and _____ County Jail
From: Arresting Officer: (Please Print) _____ Badge Number: _____

Pursuant to Minnesota Rules of Criminal Procedure 4.02, subd. 5(3), the above-named officer hereby requests that the named defendant be processed for the designated Gross Misdemeanor (GM) indicated below and as defined by Minnesota Rules of Criminal Procedure 1.04 (b).

Defendant Name: _____ **DOB:** ____/____/____
Driver's License No. _____ **State:** ____ **Date of Offense:** ____/____/____
City of Occurrence: _____ **Controlling Agency:** MN - _____
Control Number/ICR: _____ **Court File No. (Provided by Court/Jail):** _____

(Check Boxes)	<u>Designated GM Offense</u>	<u>Charge</u>	<u>Penalty (must check one)</u>	<u>MOC</u>
			2 nd Degree (E) 3 rd Degree (F)	Circle E or F
<input type="checkbox"/>	UI Alcohol	169A 20, 1(1)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__501 E F
<input type="checkbox"/>	UI Controlled Substance	169A.20, 1(2)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__601 E F
<input type="checkbox"/>	UI Hazardous Substance	169A 20, 1(3)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__H01 E F
<input type="checkbox"/>	UI Combination	169A 20, 1(4)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__G01 E F
<input type="checkbox"/>	Alcohol .08 or More Within 2 Hours of Driving	169A.20, 1(5)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__W01 E F
<input type="checkbox"/>	Alcohol .04 or More Within 2 Hours of Driving - Commercial Vehicle	169A.20, 1(6)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__K01 E F
<input type="checkbox"/>	Schedule I or II Controlled Substance	169A 20, 1(7)	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__S01 E F
<input type="checkbox"/>	Refusal to Submit To Test	169A 20, 2	<input type="checkbox"/> 169A.25 <input type="checkbox"/> 169A.26	J__R01 E F
<input type="checkbox"/>	Other (specify): _____			

Court Status: (Check One)
 Defendant incarcerated in _____ County Jail to be held in custody pending court appearance.
 Defendant released on his/her own recognizance and assigned the following court date.
 Date: ____/____/____ Time: _____
 Location: _____ County Courthouse
 Address: _____

Bail/Bond Status: (Check One) Date: ____/____/____
 Maximum \$12,000 bail under Minn. Stat. 629.471 or conditional release under Minn. Stat. 169A.44.
 Bail was posted in the amount of \$ _____
 Bond was posted in the amount of \$ _____
 No bail/bond was required

Dated: ____/____/____

 Officer's signature

 Officer's Name and Badge Number
 (if different from arresting officer)

20. Form 34. Notice of Appeal by Prosecuting Attorney to the Court of Appeals from Pretrial Order(s) of the District Court.

Amend Form 34 of the Criminal Forms following the Rules of Criminal Procedure to read as follows:

FORM 34. NOTICE OF APPEAL BY PROSECUTING ATTORNEY TO THE COURT OF APPEALS FROM PRETRIAL ORDERS(S) OF THE DISTRICT COURT

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

Plaintiff,

vs.

Defendant.

) NOTICE OF APPEAL BY
) PROSECUTING ATTORNEY
) TO THE COURT OF APPEALS
) FROM PRETRIAL ORDER(S)
) OF THE DISTRICT COURT
)
)

) District Court File No.: _____

TO: Clerk of Appellate Court
Minnesota Judicial Center
St. Paul, MN 55155

State Attorney General
Address: _____
Telephone No.: _____

(Name of county) Court Administrator
Address: _____
Telephone No.: _____

Attorney for Defendant
Address: _____
Telephone No.: _____

State Public Defender
Address: _____
Telephone No. _____

PLEASE TAKE NOTICE that the prosecuting attorney in the above-entitled case hereby appeals to the Court of Appeals of the State of Minnesota from the following pretrial order(s) of the above-named District Court entered on the following dates:

_____ day of _____, 20____ (Description of Order)
_____ day of _____, 20____ (Description of Order)
_____ day of _____, 20____ (Description of Order)

Dated: _____

(Prosecuting Attorney)
Name:
Attorney License No.:
Title:
Address:
Telephone No.: