

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8049  
(formerly C1-84-2137)

OFFICE OF  
APPELLATE COURTS

JUN 22 2011

FILED

PROMULGATION OF AMENDMENTS  
TO THE RULES OF CRIMINAL PROCEDURE

ORDER

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure filed a report on December 8, 2010, proposing changes to the rules. We published the proposed amendments and set a February 15, 2011, deadline for written comments to be submitted. The Court has reviewed the proposed amendments and the comments received, and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Minnesota Rules of Criminal Procedure are prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota to be effective September 1, 2011.
2. The amendments shall govern all criminal actions currently pending on or commenced on or after the effective date, except that the amendment to Rule 7.02 shall govern all criminal actions commenced on or after the effective date.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments.

Dated: June 22, 2011

BY THE COURT:



Lorie S. Gildea  
Chief Justice

# AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

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

## 1. Amend Rule 7.02 as follows:

### Rule 7.02 Notice of Other Offenses

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

- (a) previously prosecuted,
- (b) offered to rebut the defendant's character evidence, or
- (c) arising out of the same occurrence or episode as the charged offense.

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

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

### **Subd. 4. Timing.**

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

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

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

2. Amend Rule 22 and its Comment as follows:

**Rule 22. Subpoena**

**Rule 22.01 For Attendance of Witnesses; For Documents Form; Issuance**

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

- (a) before a grand jury;
- (b) at a hearing before the court;
- (c) at a trial before the court; or
- (d) for the taking of a deposition.

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

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

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

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

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

**Subd. 2. Documents.**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Rule 22.03 Service**

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

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

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

### **Rule 22.04 Place of Service**

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

### **Rule 22.05 Contempt**

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

### **Rule 22.06 Witness Outside the State**

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

### **Comment—Rule 22**

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

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

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

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

**3. Amend Rule 26.02, subd. 2, as follows:**

**Subd. 2. Juror Information.**

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

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

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

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

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

**4. Amend Rule 26.03, subd. 5, as follows:**

**Subd. 5. Jury Sequestration.**

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

(2) On Motion. Any party may move for sequestration of the jury at the beginning of trial or at any time during trial. Sequestration must be ordered if the case is

of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the jurors' attention. Whenever sequestration is ordered, the court in advising the jury of the decision must not disclose which party requested sequestration.

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

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

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

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

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

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

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

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

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

**6. Amend Rule 28.02, subd. 4, clause (1), as follows:**

(1) Service and Filing. A defendant appeals by filing a notice of appeal with the clerk of the appellate courts with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgement or order appealed from is entered. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case provided for in Minnesota Rule of Civil Appellate Procedure 133.03 unless the appellate court directs otherwise.

The defendant does not have to post bond to appeal. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal.

**7. Amend Rule 28.02, subd. 9, as follows:**

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

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

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

**8. Amend Rule 28.04, subd. 6, clause (3), as follows:**

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

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



- (g) Rule 28.04, subd. 2(6): attorney fees; and
- (h) Rule 28.06; voluntary dismissal.

**9. Add a new Rule 28.06 as follows:**

**Rule 28.06 Voluntary Dismissal**

If the appellant files with the clerk of the appellate courts a notice of voluntary dismissal, with proof of service upon counsel for respondent, the appellate court may dismiss the appeal. If the appellant was the defendant in the district court, the notice must be signed by the appellant, as well as appellant's legal counsel, if the appellant is represented.

**10. Amend Rule 29.03, subd. 4, as follows:**

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

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

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

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

- (1) Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings;
- (2) Rule 28.02, subd. 5: proceeding in forma pauperis;
- (3) Rule 28.02, subd. 6: stay;
- (4) Rule 28.02, subd. 7: release of defendant;
- (5) Rule 28.02, subd. 8: record on appeal;
- (6) Rule 28.02, subd. 11: scope of review; and
- (7) Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal; and
- (8) Rule 28.06; voluntary dismissal.

**12. Amend Rule 33.04(a) as follows:**

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

**13. Amend Rule 33.05 as follows:**

**Rule 33.05 Facsimile Transmission**

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