

FILED

February 15, 2017

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM 10-8049

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

The Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure filed a report on February 3, 2017, recommending amendments to the Rules of Criminal Procedure. The Committee's report with the proposed amendments to the Rules of Criminal Procedure is attached to this order. The court will consider the proposed amendments to the Rules of Criminal Procedure after receiving and considering written comments.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or opposition to the proposed amendments shall file one copy of those comments with the Clerk of the Appellate Courts, so as to be received on or before April 3, 2017.

Dated: February 15, 2017

BY THE COURT:



Lorie S. Gildea
Chief Justice

FILED

February 3, 2017

**REPORT AND PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF CRIMINAL PROCEDURE**

**MINNESOTA SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CRIMINAL PROCEDURE**

ADM10-8049

February 3, 2017

Hon. Michelle Larkin, Chair

Hon. Toddrick Barnette	Andrew Mohring ²
Hon. Joy Bartscher ²	Julie Munkelwitz
Andrew Birrell	Virginia Murphrey
David Brown	Robert Plesha ¹
Frederic Bruno ¹	Timothy Richards
Scott Christenson	Prof. Ted Sampsell-Jones
Martin Costello	Michael Spindler-Krage
Nicholas Hydukovich	Hon. Robert Tiffany ¹
Hon. Richard Kyle, Jr.	Greg Widseth
Jessica Merz-Godes	Hon. Jodi Williamson
David Miller ²	

Hon. David Lillehaug
Supreme Court Liaison

Karen Kampa Jaszewski
Staff Attorney

¹Term ended September 30, 2016

²Appointed effective January 1, 2017, and took no part in the discussions or recommendations contained in this report.

I. INTRODUCTION

This report summarizes the Committee's recommendations for amendments to the guilty-plea petitions in the Appendix to Rule 15 of the Rules of Criminal Procedure, adoption of forms that can be used to support *Alford* and *Norgard* guilty pleas, adoption of forms that can be used to ensure compliance with Rule 26.01, subdivision 3 and 4 (governing court trials), amendments governing court trials based entirely on stipulated evidence, amendments to Form 32 Waiver of Jury Trial Pursuant to Rule 26.01, subd. 1(2)(a), as well as the corresponding rules and comments, and amendments to the ITV rules.

II. PROPOSED AMENDMENTS

A. Plea Petitions

The Committee reviewed the felony and misdemeanor/gross misdemeanor guilty-plea petitions in the Appendix to the Rules of Criminal Procedure. The Committee recommends a number of stylistic amendments to make the forms more modern in appearance and consistent with the versions of the guilty-plea petitions that are posted on the Minnesota Judicial Branch website in the Get Forms section. The only substantive amendments are a correction to the naturalization language on the felony plea petition to conform to Rule 15, and a clarification and reordering of the waivers regarding presence at plea and sentencing on the misdemeanor/gross misdemeanor plea petition. If the Committee's proposed changes are approved, the Committee recommends that the versions posted in the Get Forms section of the Minnesota Judicial Branch's website be replaced with the versions adopted by the Supreme Court so that the plea petitions posted in the Appendix and in the Get Forms section will be identical.

The Committee notes that it questions the inclusion of a defendant's address and email address in guilty-plea petitions. Several Committee members are concerned that the inclusion makes the defendant's personal contact information more readily accessible to the public. The Committee recommends inclusion of that information only to conform to the plea-petition form posted in the Get Forms section of the website.

As part of its review of the guilty-plea petitions, the Committee discussed, and now recommends, the adoption of forms for use when proceeding with *Alford* and *Norgaard* guilty pleas. The forms are intended to ensure compliance with foundational requirements for such pleas, as well as the defendant's understanding of the consequences of such pleas. The proposed forms intentionally use the phrase "guilty plea" to convey that an *Alford* or *Norgaard* plea is indeed a guilty plea.

B. Rule 26.01

The Committee discussed whether it should draft forms to assist practitioners and judges in complying with the requirements in Rule 26.01, subdivision 3, Trial on Stipulated Facts, and subdivision 4, Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling. The Committee also discussed *Dereje v. State*, in which the Minnesota Supreme Court clarified that a stipulated-evidence trial is not a stipulated-fact trial under Rule 26.01, subdivision 3. 837 N.W.2d 714, 720-21 (Minn. 2013). Prior to *Dereje*, Minnesota courts often referred to bench trials involving stipulations to a body of evidence as stipulated-facts trials under Rule 26.01, subdivision 3. See, e.g., *State v. Eller*, 780 N.W.2d 375, 380 (Minn. App. 2010) (discussing "stipulated-facts trial" under Rule 26.01, subdivision 3, in which district court considered complaint, DVD, police report, hand-drawn exhibit, and two implied-consent advisories). Since *Dereje* was decided, there has been disagreement among practitioners regarding what if any waivers are necessary for a stipulated-evidence trial, and there are conflicting unpublished Minnesota Court of Appeals opinions regarding this issue.

A few Committee members voiced opposition to the use of stipulated-evidence trials in general, arguing they are not really trials because the factfinder cannot meaningfully assess witness credibility. The Committee recognizes that a defendant gives up the rights of confrontation and cross examination when he or she agrees to a stipulated-evidence trial. However, the defendant can still present a closing argument. Moreover, stipulated-evidence trials are frequently used to settle cases. And in some cases, a stipulated-evidence trial may be a preferable alternative to an *Alford* plea. Because stipulated-evidence trials are commonly used, the Committee recommends that a rule be adopted to recognize stipulated-evidence trials, to set forth the proper procedure for such trials, and to identify the waivers defendants must make when agreeing to stipulated-evidence trials. In accordance, the Committee recommends amendments to Rule 26.01, subdivision 3.

The Committee debated whether a defendant who agrees to a stipulated-evidence trial may raise issues related to the admissibility of the stipulated evidence on appeal. The majority of the Committee agrees that a defendant should not be allowed to challenge the admissibility of stipulated evidence on appeal and included language to that effect in the proposed amendments to Rule 26.01, subdivision 3. The Committee recommends that Rule 26.01, subdivisions 3 and 4, as well as the subdivision 1 form (Form 32 in the Criminal Forms), be revised for consistency regarding the waivers necessary for a stipulated-evidence trial.

In addition to the recommended changes to the rules, the Committee recommends the adoption of forms that can be used when proceeding with court trials under Rule 26.01, subdivisions 3 and 4. The Committee believes that the forms will provide guidance to judges and practitioners regarding the procedural requirements in the rule.

The Committee considered and rejected a proposal to add the *Ross* jury-waiver guidelines to Rule 26.01, subdivision 1. The Committee was concerned that the inclusion of too many specific requirements in procedural rules can lead to errors and appeals. For that reason, the Committee instead added a reference to *Ross* in the comments to Rule 26.

The comments to Rules 1 and 14 are also modified in accordance with the rule changes addressed above.

C. ITV Rules

At the request of the Supreme Court, the Committee reviewed the ITV Workgroup report filed on December 21, 2015. The Committee agrees with the recommendations in that report but has modified the proposed rule amendments slightly for clarity and to conform to the 2012 amendments to the Rules of Criminal Procedure that procedurally treat gross misdemeanors like misdemeanors rather than felonies. The Committee notified the Co-Chairs of the Workgroup of its intent to modify the Workgroup's recommendation and asked if the Co-Chairs had any objection to the proposed changes. The Workgroup has not notified the Committee of objection to the Committee's proposal.

III. OTHER DISCUSSION

The Committee has been monitoring and discussing the pilot on audio and video coverage of certain criminal proceedings and will file a separate report regarding that issue on or before January 1, 2018, as directed by the August 12, 2015, Supreme Court order.

Respectfully Submitted,

ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments be made in the Minnesota Rules of Criminal Procedure. In the proposed amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words. **Where a new form is proposed, because all of the proposed text is new, the underline format has not been used.**

1. Amend Rule 1.05, subd. 7, paragraph 1, as follows:

(1) Defendant's Attorney. The defendant and the defendant's attorney must be present at the same terminal site ~~except in~~unless unusual or emergency circumstances specifically related to the defendant's case exist, or the defendant and defendant's attorney consent to being at different terminal sites, and then only if all parties agree on the record and the court approves. ~~This exception for unusual or emergency circumstances does not apply to:~~The defendant and his attorney must be present at the same terminal site in:

- (a) felony ~~or gross misdemeanor~~ plea proceedings when the defendant is entering a guilty plea or
- (b) felony ~~or gross misdemeanor~~ sentencing proceedings.

2. Amend Rule 1.05, subd. 10, paragraph 1, as follows:

(1) Where Conducted. When an ITV proceeding is conducted, the terminal site(s) for the defendant, defense attorney, prosecutor, and judge must be located in a courtroom unless otherwise approved by the court prior to the hearing. The terminal site(s) for witnesses, victims or other persons may be located in a courtroom or another suitable room reasonably accessible to the public as approved by the judge conducting the proceeding.

3. Amend the Comments to Rule 1, paragraph 4, as follows:

For aggravated sentence procedures related to Blakely, see Rule 7.03 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by complaint); Rule 9.01, subd. 1(7) (discovery of evidence relating to an aggravated sentence); Rule 11.04, subd. 2 (Omnibus Hearing decisions on aggravated sentence issues); Rule 15.01, subd. 2 and Appendices E and F (required questioning and written petition provisions concerning defendant's admission of facts supporting an aggravated sentence and accompanying waiver of rights); Rule 19.04, subd. 6 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by indictment); Rule 26.01, subd. 1(2)(b)

(waiver of right to a jury trial determination of facts supporting an aggravated sentence); Rule 26.01, subd. 3 (stipulation of facts, evidence, or both to support an aggravated sentence and accompanying waiver of rights); Rules 26.03, subd. 18(1) and (3) (motion that evidence submitted to jury was insufficient to support an aggravated sentence); Rule 26.03, subd. 19(7) (verdict forms); Rule 26.03, subd. 20(5) (polling the jury); and Rule 26.04, subd. 1 (new trial on aggravated sentence issue). The procedures provided in these rules for the determination of aggravated sentence issues supersede the procedures concerning those issues in Minnesota Statutes, section 244.10 (see 2005 Minnesota Laws, chapter 136, article 16, sections 3-6) or other statutes.

4. Amend the Comments to Rule 14, paragraph 3, as follows:

A conditional plea of guilty may not be entered when the defendant reserves the right to appeal the denial of a motion to suppress evidence or any other pretrial order. State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980). ~~One option, as authorized by Rule 26.01 subd. 3, is to plead not guilty, stipulate the facts, waive the jury trial, and, if there is a finding of guilty, appeal the judgment of conviction. Id.~~ However, the parties may agree to stipulate to the prosecution's case to obtain review of a pretrial ruling under Rule 26.01, subd. 4. A guilty plea also waives any appellate challenge to an order certifying the defendant as an adult. Waynewood v. State, 552 N.W.2d 718 (Minn. 1996).

5. Amend Rule 26.01, subd. 3, as follows:

Subd. 3. Trial on Stipulated Facts; Trial on Stipulated Evidence.

(a) The defendant and the prosecutor may agree that a determination of the defendant's guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both. ~~Before proceeding, the defendant must acknowledge and personally waive the rights to:~~

(b) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), or subdivision 1(2)(b), or both, and must personally waive the following specific rights:

(1) to testify at trial;

(2) to have the prosecution witnesses testify in open court in the defendant's presence;

(3) to question those prosecution witnesses; and

(4) to require any favorable witnesses to testify for the defense in court.

~~(b)(c)~~ The agreement and the waiver must be in writing or be placed on the record.

~~(e)(d)~~ If the parties use this procedure to determine the issues of the defendant's guilt, and the existence of facts to support an aggravated sentence, the defendant must make a separate waiver of the above-listed rights as to each issue.

~~(d)~~(e) On submission of the case entirely on stipulated facts, stipulated evidence, or both, the court must proceed under subdivision 2 of this rule as in any other trial to the court.

~~(e)~~(f) If the court finds the defendant guilty based entirely on the stipulated facts, stipulated evidence, or both, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court, except the existence of facts or the admissibility of evidence to which the defendant stipulated.

6. Amend Rule 26.01, subd. 4, as follows:

Subd. 4. Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling.

(a) When the parties agree that the court's ruling on a specified pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary, the following procedure must be used to preserve the issue for appellate review.

(b) The defendant must maintain the plea of not guilty.

(c) The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal.

(d) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), and must ~~also~~personally waive the rights specified in Rule 26.01, subdivision 3~~(a)~~(b)(1)-(4).

(e) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.

(f) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.

(g) The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.

(h) After consideration of the stipulated evidence, the court must make an appropriate finding, and if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

7. Amend the Comments to Rule 26, paragraphs 1 through 7, as follows:

Rule 26.01, subd. 1(1) (Right to Jury Trial). In cases of felonies and gross misdemeanors, the defendant has the right to a jury trial under Minn. Const. Art. 1, § 6, which guarantees the right to jury trial in "all criminal prosecutions." The term "criminal prosecution" includes prosecutions for all crimes defined by Minn. Stat. § 609.02. See Peterson v. Peterson, 278 Minn. 275, 281, 153 N.W.2d 825, 830 (1967); State v. Ketterer, 248 Minn. 173, 176, 79 N.W.2d 136, 139 (1956). The defendant's right to jury trial for offenses punishable by more than six months

imprisonment is also guaranteed by the Fourteenth and Sixth Amendments to the United States Constitution. *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968); *Baldwin v. New York*, 399 U.S. 66, 69 (1970).

Since misdemeanors in Minnesota are punishable by no more than 90 days of incarceration or a fine or both, Minn. Stat. § 609.03, subd. 3, no federal constitutional right exists to a jury trial on a misdemeanor. However, a state constitutional right to a jury trial exists in any prosecution for the violation of a misdemeanor statute punishable by incarceration. See Minn. Const. Art. 1, § 6 as interpreted in *State v. Hoben*, 256 Minn. 436, 444, 98 N.W.2d 813, 819 (1959).

Rule 26.01, subd. 1(2)(a) establishes the procedure for waiver of the right to trial by jury on the issue of guilt. A jury waiver must be knowing, intelligent, and voluntary. *State v. Ross*, 472 N.W.2d 651, 653-54 (Minn. 1991). "The focus of [an] inquiry [regarding a jury waiver] is on whether the defendant understands the basic elements of a jury trial." *Id.* at 654. The Minnesota Supreme Court has recommended the following guidelines: "the defendant should be told that a [felony] jury . . . is composed of 12 members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous, and that, if the defendant waives a jury, the judge alone will decide guilt or innocence." *Id.*

Rule 26.01, subd. 1(2)(b) establishes the procedure for waiver of the right to trial by a jury on the issue of an aggravated sentence. See generally *Blakely v. Washington*, 542 U.S. 296 (2004) and *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005) as to the constitutional limitations on imposing aggravated sentences based on findings of fact beyond the elements of the offense and the conviction history. Also, see Rules 1.04 (d), 7.03, and 11.04, subd. 2 and the comments to those rules. Whether a defendant has waived or demanded a jury trial on the issue of guilt, that defendant may still have a jury trial on the issue of an aggravated sentence, and a valid waiver under Rule 26.01, subd. 1(2)(b) must be made before an aggravated sentence may be imposed based on findings not made by jury trial. The requirements for a valid jury waiver are discussed in the comment regarding Rule 26.01, subd. 1(2)(a).

Rule 26.01, subd. 1(3) (Withdrawal of Jury-Trial Waiver) provides that waiver of jury trial may be withdrawn before commencement of trial. Trial begins when jeopardy attaches.

Rule 26.01, subd. 3 (Trial on Stipulated Facts; Trial on Stipulated Evidence) previously applied only to court trials on stipulated facts. In *Dereje v. State*, 837 N.W.2d 714 (Minn. 2013), the Minnesota Supreme Court clarified that Rule 26.01, subd. 3, does not apply to a court trial on a stipulated body of

evidence. Rule 26.01, subd. 3, was amended in 2016 to apply to court trials on stipulated evidence, as well as court trials on stipulated facts. A defendant who agrees to a court trial on stipulated facts, stipulated evidence, or both, must acknowledge and personally waive the rights listed in Rule 26.01, subd. 3(b)(1)-(4). A defendant who agrees to a court trial under Rule 26.01, subd. 3, does not have the right to appellate review of the existence of facts or the admissibility of evidence to which the defendant stipulated.

The rules do not permit conditional pleas of guilty by which the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. Rule 26.01, subd. 4 implements the procedure authorized by *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), which allows a defendant to stipulate. ~~This rule supersedes Lothenbach as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling. Rule 26.01, subd. 4, "replaced Lothenbach as the method for preserving a dispositive pretrial issue for appellate review in a criminal case."~~ *State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016). Rule 26.01, subd. 4, limits appellate review to the dispositive pretrial issue. ~~This rule also distinguishes the Lothenbach-type procedure it implements from Rule 26.01, subd. 3 (Trial on Stipulated Facts).~~ Rule 26.01, subd. 3 should be used if there is no pretrial ruling dispositive of the case, and if the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence. See *State v. Busse*, 644 N.W.2d 79, 89 (Minn. 2002).

The phrase in the first sentence of Rule 26.01, subd. 4(a)--"or that the ruling makes a contested trial unnecessary"--recognizes that a pretrial ruling will not always be dispositive of the entire case, but that a successful appeal of the pretrial issue could nonetheless make a trial unnecessary, such as in a DWI case where the only issue is the validity of one or more qualified prior impaired driving incidents as a charge enhancement. See, e.g., *State v. Sandmoen*, 390 N.W.2d 419, 423 (Minn. App. 1986). The parties could agree that if the defendant prevailed on appeal, the defendant would still have a conviction for an unenhanced DWI offense. Where a conviction for some offense is supportable regardless of the outcome of the appeal, but a contested trial would serve no purpose, Rule 26.01, subd. 4 could be used.

8. Amend Appendix A to Minn. R. Crim. P. 15 as proposed in the attached form.
9. Amend Appendix B to Minn. R. Crim. P. 15 as proposed in the attached form.
10. Adopt an Appendix G to Minn. R. Crim. P. 15 *Alford* Addendum as proposed in the attached form.

11. Adopt an Appendix H to Minn. R. Crim. P. 15 *Norgaard* Addendum as proposed in the attached form.

12. Delete Form 32, Waiver of Jury Trial Pursuant to Rule 26.01, subd. 1(2)(a), and adopt a new Form 32a, Waiver of Trial by Jury Pursuant to Rule 26.01, subd. 1(2)(a), (b), as proposed in the attached form.

13. Adopt Form 32b, Waiver of Rights and Agreement Regarding Rule 26.01, subd. 3, Trial on Stipulated Facts, Stipulated Evidence, or Both, as proposed in the attached form.

14. Adopt Form 32c, Waiver of Rights and Agreement Regarding Rule 26.01, subd. 4, Trial on Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling as proposed in the attached form.

APPENDIX A TO MINN. R. CRIM. P. 15

STATE OF MINNESOTA _____ IN DISTRICT COURT
COUNTY OF _____ JUDICIAL DISTRICT

----- [Delete dashed line.]

State of Minnesota

County

District Court

Judicial District: _____

Court File Number: _____

Case Type: Criminal

State of Minnesota,
Plaintiff

vs.

[Change document title font to bold
And Capitalize Each Word.]

**Petition To Enter
Plea Of Guilty In
Felony Case Pursuant To
Rule 15**

Defendant

----- [Delete dashed line.]

TO: THE ABOVE NAMED COURT:

I, _____, ~~d~~Defendant in the above-entitled action, do respectfully represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____.
The last grade that I went through in school is _____.

2. If filed in my case, I have received, read, and discussed a copy of the
(~~i~~ndictment)(~~C~~omplaint).

3. I understand the charge(s) made against me in this case.

4. Specifically, I understand that I have been charged with the crime(s) of _____

committed on or about (~~month~~)(~~day~~), (~~year~~) _____ in _____ County, Minnesota.
(month)(day)(year)

5. I am represented by an attorney whose name is _____, ~~and:~~
- I feel that I have had sufficient time to discuss my case with my attorney.
 - I am satisfied that my attorney is fully informed as to facts of this case.
 - My attorney has discussed possible defenses to the crime that I might have.
 - I am satisfied that my attorney has represented my interests and has fully advised me.
6. I ~~(have)(have never)~~ ☐ have / ☐ have never been a patient in a mental hospital.
7. I ~~(have)(have not)~~ ☐ have / ☐ have not talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
8. I ~~(have)(have not)~~ ☐ have / ☐ have not been ill recently.
9. I ~~(have)(have not)~~ ☐ have / ☐ have not recently been taking pills or other medicines.
10. I ~~(do)(do not)~~ ☐ do / ☐ do not make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime.
11. I ~~(do)(do not)~~ ☐ do / ☐ do not make the claim that I was acting in self-defense or merely protecting myself or others at the time of the crime.
12. I ~~(do)(do not)~~ ☐ do / ☐ do not make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.
13. I ~~(was)(was not)~~ ☐ was / ☐ was not represented by an attorney when I ~~(had a probable cause hearing)~~. (If I have not had a probable cause hearing, I understand that:)
- ~~I know that~~ I could now move that the complaint against me be dismissed for lack of probable cause and I know that if I do not make such a motion and go ahead with entering my plea of guilty, I waive all right to successfully object to the absence of a probable cause hearing.
 - ~~I also know that~~ I waive all right to successfully object to any errors in the probable cause hearing when I enter my plea of guilty.
14. My attorney has told me and I understand that:
- ~~That the~~ The prosecutor for the case against me, has:
 - physical evidence obtained as a result of searching for and seizing the evidence;
 - evidence in the form of statements, oral or written that I made to police or others regarding this crime;
 - evidence discovered as a result of my statements or as a result of the evidence seized in a search;
 - identification evidence from a line-up or photographic identification;

v. evidence the prosecution believes indicates that I committed one or more other crimes.

b. ~~That~~ I have a right to a pretrial hearing before a judge to determine whether or not the evidence the prosecution has could be used against me if I went to trial in this case.

c. ~~That if~~ I requested such a pretrial hearing I could testify at the hearing if I wanted to, but my testimony could not be used as substantive evidence against me if I went to trial and could only be used against me if I was charged with the crime of perjury. (Perjury means testifying falsely.)

d. ~~That I (do)(do not)~~ ☐ do / ☐ do not now request such a pretrial hearing and I specifically ~~(do)(do not)~~ ☐ do / ☐ do not now waive my right to have such a pretrial hearing.

e. ~~That whether~~ Whether or not I have had such a hearing I will not be able to object tomorrow or any other time to the evidence that the prosecutor has.

15. I have been told by my attorney and I understand that:

a. ~~That if~~ If I wish to plead not guilty I am entitled to a trial by a jury on the issue of guilt, and all jurors would have to agree I was guilty before the jury could find me guilty.

b. ~~That if~~ If I plead guilty I will not have a trial by either a jury or by a judge without a jury.

c. ~~That with~~ With knowledge of my right to a trial on the issue of guilt, I now waive my right to a trial.

16. I have been told by my attorney and I understand that if I wish to plead not guilty and have a trial by jury or trial by a judge I would be presumed innocent until my guilt is proved beyond a reasonable doubt.

17. I have been told by my attorney and I understand that:

a. ~~That if~~ If I wish to plead not guilty and have a trial the prosecutor would be required to have the witnesses testify against me in open court in my presence and that I would have the right, through my attorney, to question these witnesses.

b. ~~That with~~ With knowledge of my right to have the prosecution's witnesses testify in open court in my presence and be questioned by my attorney, I now waive this right.

18. I have been told by my attorney and I understand that:

a. ~~That if~~ If I wish to plead not guilty and have a trial I would be entitled to require any witnesses that I think are favorable to me to appear and testify at trial.

b. ~~That with~~With knowledge of my right to require favorable witnesses to appear and testify at trial I now waive this right.

19. I have been told by my attorney and I understand that:

a. ~~That a~~A person who has prior convictions or a prior conviction can be given a longer prison term ~~because of this~~.

b. ~~That the~~The maximum penalty that the court could impose for this crime (taking into consideration any prior conviction or convictions) is imprisonment for ____ years. ~~That if~~If a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than ____ months for this crime.

c. ~~That for~~For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow any executed prison sentence that is imposed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is ____ years.

d. ~~That a~~A person who participates in a crime by intentionally aiding, advising, counseling, and conspiring with another person or persons to commit a crime is just as guilty of that crime as the person or persons who are present and participating in the crime when it is actually committed.

e. ~~That my~~My present probation or parole could be revoked because of ~~the my~~my plea of guilty to this crime.

f. ~~That the~~The prosecutor is seeking an aggravated sentence of _____.

20. I have been told by my attorney and I understand that:

a. ~~That my~~My attorney discussed this case with one of the prosecuting attorneys, and ~~that my attorney and the prosecuting attorney agreed~~agree that if I ~~entered~~enter a plea of guilty, the prosecutor will do the following (provide the substance of the agreement):

(~~Give the substance of the agreement~~)

b. ~~That if~~If the court does not approve this agreement:

- i. I have an absolute right to ~~then~~ withdraw my plea of guilty and have a trial.
- ii. Any testimony that I have given concerning the guilty plea could not be used against me unless I am charged with the crime of perjury based on this testimony.

21. That except for the agreement between my attorney and the prosecuting attorney:

a. No one - including my attorney, any police officer, prosecutor, judge, or any other person - has made any promises to me, to any member of my family, to any of my friends, or to other persons, ~~in order~~ to obtain a plea of guilty from me.

b. No one - including my attorney, any police officer, prosecutor, ~~or~~ judge, or any other person - has threatened me, ~~or~~ any member of my family, ~~or~~ my friends, or other persons, ~~in order~~ to obtain a plea of guilty from me.

22. My attorney has told me and I understand that if my plea of guilty is for any reason not accepted by the court, or if I withdraw the plea, with the court's approval, or if the plea is withdrawn by court order on appeal or other review:

a. I would then stand trial on the original charge(s) ~~(charges)~~.

b. The prosecution could proceed against me just as if there had been no plea of guilty and no plea agreement.

23. My attorney has told me and I understand that if my plea of guilty is accepted by the judge I have the right to appeal, but that any appeal or other court action I may take claiming error in the proceedings probably would be useless and a waste of my time and the court's time.

24. My attorney has told me and I understand that a judge will not accept a plea of guilty ~~for from~~ anyone who claims to be innocent.

25. I now make no claim that I am innocent.

26. I have been told by my attorney and I understand that if I wish to plead not guilty and have a jury trial:

a. ~~That~~ I could testify at trial if I wanted to but I could not be forced to testify.

b. ~~That if~~ I decided not to testify neither the prosecutor nor the judge could comment on my failure to testify.

c. ~~That with~~ With knowledge of my right not to testify and that neither the judge nor the prosecutor could comment on my failure to testify at trial, I now waive this right and ~~I will~~ tell the judge about the facts of the crime.

27. My attorney has told me and I understand that if I am not a citizen of the United States, ~~this my~~ plea of guilty may result in deportation, exclusion from admission to the United States ~~of America~~, or denial of ~~citizenship~~ naturalization as a United States citizen.

28. That in view of all the above facts and considerations, I wish to enter a plea of guilty to the offense(s) of

(name of offense(s))

in violation of _____
(statute(s) or ordinance(s))

Dated this _____ day of _____, _____

DEFENDANT

Dated: _____

Signature of Defendant
Name: _____
Street Address: _____
City/State/Zip: _____
E-mail address: _____

APPENDIX B TO MINN. R. CRIM. P. 15

STATE OF MINNESOTA _____ IN DISTRICT COURT
COUNTY OF _____ JUDICIAL DISTRICT

----- [Delete dashed line.]

State of Minnesota

County _____

District Court

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

_____ [Delete blank line.]

State of Minnesota,

Plaintiff;

vs.

[Change document title font to bold
And Capitalize Each Word.]

MISDEMEANOR

/GROSS MISDEMEANOR

Petition To

Enter Plea Of Guilty In

Misdemeanor Or Gross

Misdemeanor Case

Pursuant To Rule 15

Defendant

District Court File No. _____

----- [Delete dashed line.]

TO: THE ABOVE NAMED COURT:

I wish to enter a plea of guilty in the above-entitled case, and I hereby state to the Court the following:

1. I am the Defendant in this case, my full name is _____, and my date of birth is _____.

2. I am charged with ~~(name of offense)~~ _____ in violation of
(name of offense(s))
~~(statute or ordinance)~~ _____
(statute(s) or ordinance(s))

3. I hereby plead guilty to the offense(s) of ~~(name of offense)~~ _____,
(name of offense(s))
in violation of ~~(statute or ordinance)~~ _____,
(statute(s) or ordinance(s))

4. I am pleading guilty because on ~~(date)~~ _____, in the City of _____,
(date)
County of _____, and State of Minnesota, I committed the following acts: (state
sufficient facts to establish a factual basis for all elements of the offense(s) to which the
defendant is pleading guilty): _____

_____.

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

6. RIGHT TO AN ATTORNEY. I understand that I have the right to be represented by an
attorney and that an attorney will be appointed to represent me without cost to me if I cannot
afford to pay for an attorney.

7. ☐ I have fully discussed the charge(s), my constitutional rights, and this petition with my
attorney, ~~(name of attorney)~~ _____,
(name of attorney)

OR

~~7a.~~ ☐ WAIVER OF ATTORNEY. I give up my right to be represented by an attorney and
any right I might have to request that an attorney be appointed to represent me.

8. I understand that I also have the following constitutional rights which I knowingly and
voluntarily give up:

a. The right to a trial to the court or to a jury in which I am presumed innocent until
proven guilty beyond a reasonable doubt and in which all jurors in a jury trial must agree I am
guilty before the jury could find me guilty.

b. The right to confront and cross-examine all witnesses against me.

c. The right to remain silent or to testify for myself.

d. The right to subpoena and present witnesses to testify for me in my defense.

e. The right to a pretrial hearing to contest the admissibility at trial of any confessions or admissions or of any evidence obtained from a search and seizure.

9. I am entering my plea of guilty freely and voluntarily and without any promises except as indicated in number 10 below.

10. I am entering my plea of guilty based on the following plea agreement with the prosecutor- (if none so state):- _____

11. I understand that if the court does not approve this agreement, I have the right to withdraw my plea of guilty and have a trial.

12. I understand that if this plea of guilty is accepted, I have the right to be present at the time of sentencing and to speak and to present evidence on my behalf.

13. ~~I hereby request to be present at the time of sentencing.~~

~~OR~~

~~13a. ☐ I hereby knowingly and voluntarily give up my right to be present when my plea is entered upon (entry of my plea and) sentencing and request that the court sentence me in my absence, but according to any plea agreement that might be contained in this petition.~~

14. ☐ I hereby request to be present at the time of sentencing.

OR

☐ I hereby knowingly and voluntarily give up my right to be present at the time of sentencing and request that the court sentence me in my absence, but according to any plea agreement that might be contained in this petition.

15. I understand that if I am not a citizen of the United States, my plea of guilty may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

Dated this _____ day of _____, _____.

Signature of Defendant

~~Printed name of Defendant~~

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

I, ~~(name of attorney)~~ _____, state that I am the attorney for the defendant in the above-entitled criminal action; and that I personally explained the contents of the above petition to the defendant; ~~and that I personally observed the defendant date and sign the above petition.~~

~~Dated this~~ ____ day of _____, ____.

~~Attorney for Defendant~~

Dated: _____

Attorney for Defendant

E-mail address

PETITION AND PLEA OF GUILTY ACCEPTED BY

Judge of District Court

Date

APPENDIX G TO MINN. R. CRIM. P. 15

State of Minnesota

District Court

County

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

State of Minnesota,
Plaintiff

vs.

***Alford Addendum to
Petition to Enter Plea of
Guilty Pursuant to Rule 15***

Defendant

TO THE ABOVE-NAMED COURT:

When a defendant tenders a guilty plea while maintaining innocence, the following language replaces paragraphs 24 and 25 of the Petition to Enter Plea of Guilty in Felony Case Pursuant to Rule 15. The district court and parties must ensure that an adequate factual basis is established on the record. See North Carolina v. Alford, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970); State v. Theis, 742 N.W.2d 643, 649 (Minn. 2007); State v. Goulette, 258 N.W.2d 758, 761 (Minn. 1977).

I, _____, Defendant in the above-entitled action, do respectfully represent and state as follows:

My attorney has told me and I understand that a judge generally will not accept a plea of guilty from someone who claims to be innocent. However, I understand that the judge may accept my *Alford* guilty plea despite my claim of innocence, so long as I agree the state's evidence is sufficient for a jury to find me guilty, beyond a reasonable doubt, if I have a trial. With this principle in mind, I acknowledge that:

- a. I have reviewed the evidence that the state will offer against me if I have a trial.
- b. I believe that there is a substantial likelihood that I will be found guilty, beyond a reasonable doubt, of the offense to which I am pleading if the state's evidence is presented against me at trial.
- c. If the judge accepts my *Alford* guilty plea, I will be convicted of the offense to which I am pleading, and I will be considered just as guilty as I would be if I had admitted my guilt. My claim of innocence will not have any impact on the terms and conditions of my sentence, my probation (if any), or any collateral consequences stemming from my conviction, including civil commitment for treatment.

d. I may be required to successfully complete treatment for my conduct underlying the offense to which I am pleading. If I am required to successfully complete such treatment and I refuse to admit my guilt in treatment, I may be discharged from treatment. Failure to complete such treatment may result in my incarceration, civil commitment for treatment, or both.

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

APPENDIX H TO MINN. R. CRIM. P. 15

State of Minnesota

District Court

County

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

State of Minnesota,
Plaintiff

vs.

***Norgaard Addendum to
Petition to Enter Plea of
Guilty Pursuant to Rule 15***

Defendant

TO THE ABOVE-NAMED COURT:

When a defendant tenders a guilty plea despite claiming a loss of memory regarding the circumstances of the offense, the following language replaces paragraph 26c of the Petition to Enter Plea of Guilty in Felony Case Pursuant to Rule 15. The district court and parties must ensure that an adequate factual basis is established on the record. See State v. Ecker, 524 N.W.2d 712, 716-17 (Minn. 1994); State ex rel. Norgaard v. Tahash, 261 Minn. 106, 110 N.W.2d 867 (1961).

I, _____, Defendant in the above-entitled action, do respectfully represent and state as follows:

My attorney has told me and I understand that a defendant normally must tell the judge about the facts of the crime when pleading guilty. However, I understand that the judge may accept my *Norgaard* guilty plea even though I do not remember the circumstances of the offense, so long as I agree the state's evidence is sufficient for a jury to find me guilty, beyond a reasonable doubt, if I have a trial. With this principle in mind, I acknowledge that:

- a. I have reviewed the evidence that the state will offer against me if I have a trial.
- b. I do not recall the circumstances of the offense.
- c. I believe that there is a substantial likelihood that I will be found guilty, beyond a reasonable doubt, of the offense to which I am pleading if the state's evidence is presented against me at trial.
- d. I do not claim that I am innocent.

e. If the judge accepts my *Norgaard* guilty plea, I will be convicted of the offense to which I am pleading, and I will be considered just as guilty as I would be if I remembered the circumstances of the offense and told the court about the facts of the crime. My lack of memory will not have any impact on the terms and conditions of my sentence, my probation (if any), or any collateral consequences stemming from my conviction, including civil commitment for treatment.

f. I may be required to successfully complete treatment for my conduct underlying the offense to which I am pleading. Failure to complete such treatment may result in my incarceration, civil commitment for treatment, or both.

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

FORM 32a - WAIVER OF JURY TRIAL PURSUANT TO RULE 26.01, SUBD. 1(2)(a), (b)

State of Minnesota

District Court

County

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

State of Minnesota,
Plaintiff

**Waiver of Trial by Jury
Pursuant to Rule 26.01,
subd. 1(2)(a), (b)**

vs.

Defendant

TO THE ABOVE-NAMED COURT:

I, _____, Defendant in the above-entitled action, have been advised by the court of my right to a trial by jury on the issue of guilt and the issue of an aggravated sentence. I understand that:

- a. a jury is composed of the number of jurors required by law, selected from the community,
- b. I may participate in the selection of the jurors,
- c. the jury's general verdict and answer(s) to any special interrogatory(ies) must be unanimous, and
- d. if I waive a jury, the judge alone will determine my guilt or innocence, whether facts exist to support an aggravated sentence, or both.

Mark one or both lines:

_____ I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the issue of guilt.

_____ I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the existence of facts to support an aggravated sentence.

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

**FORM 32b - WAIVER OF RIGHTS AND AGREEMENT REGARDING RULE 26.01,
SUBD. 3**

State of Minnesota

County _____

District Court

Judicial District: _____

Court File Number: _____

Case Type: Criminal

State of Minnesota,
Plaintiff

vs.

**Waiver of Rights and Agreement
Regarding Rule 26.01, subd. 3,
Trial on Stipulated Facts,
Stipulated Evidence, or Both**

Defendant

TO THE ABOVE-NAMED COURT:

PROSECUTOR'S AGREEMENT

1) The prosecutor agrees to a trial based entirely on stipulated facts, stipulated evidence, or both as set forth in paragraphs 2 and 6 of this document.

Dated: _____
Signature of Prosecutor

**DEFENDANT'S AGREEMENT, NOT GUILTY PLEA, WAIVER OF TRIAL BY JURY
AND ASSOCIATED RIGHTS, STIPULATION, AND ACKNOWLEDGMENT OF
APPELLATE REVIEW**

2) I, _____, Defendant in the above-entitled action, agree that (mark one or both lines)

_____ a determination of my guilt

_____ the existence of facts to support an aggravated sentence

may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.

3) I maintain my plea of not guilty.

4) I have been advised by the court of my right to a trial by jury on the issue of guilt and the issue of an aggravated sentence. I understand that:

- a. a jury is composed of the number of jurors required by law, selected from the community,
- b. I may participate in the selection of the jurors,
- c. the jury's general verdict and answer(s) to any special interrogatory(ies) must be unanimous, and
- d. if I waive a jury, the judge alone will determine my guilt or innocence, whether facts exist to support an aggravated sentence, or both.

Mark one or both lines:

_____ I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the issue of guilt.

_____ I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the existence of facts to support an aggravated sentence.

5) I have had an opportunity to consult with counsel regarding the following trial rights:

- a. to testify at trial,
- b. to have the prosecution witnesses testify in open court in my presence,
- c. to question those prosecution witnesses, and
- d. to require any favorable witnesses to testify for me in court.

Mark one or both lines:

_____ I acknowledge these trial rights and I hereby waive them for the purpose of the determination of guilt.

_____ I acknowledge these trial rights and I hereby waive them for the purpose of the determination of the existence of facts to support an aggravated sentence.

6) I stipulate to the existence of the following facts, the court's consideration of the following evidence, or both, for the purpose(s) described in paragraph 2 of this document **(describe stipulations here or refer to on-the-record recitation of stipulations).**

7) I understand that if the court finds me guilty based on the stipulated facts, stipulated evidence, or both, I may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court. I understand that I may not appeal the existence of facts or the admissibility of evidence to which I stipulated, including any evidence that was the subject of a pretrial ruling.

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

**FORM 32c - WAIVER OF RIGHTS AND AGREEMENT REGARDING RULE 26.01,
SUBD. 4**

State of Minnesota

District Court

County

Judicial District:	
Court File Number:	
Case Type:	Criminal

State of Minnesota,
Plaintiff

vs.

**Waiver of Rights and Agreement
Regarding Rule 26.01, subd. 4,
Trial on Stipulation to
Prosecution's Case to Obtain
Review of a Pretrial Ruling**

Defendant

TO THE ABOVE-NAMED COURT:

PROSECUTOR'S AGREEMENT THAT PRETRIAL RULING IS DISPOSITIVE

1) The prosecutor acknowledges and agrees that the court's ruling on the following pretrial issue is dispositive of the case or that a trial will be unnecessary if the defendant prevails on appeal (describe pretrial ruling):

Dated: _____
Signature of Prosecutor

**DEFENDANT'S AGREEMENT, NOT GUILTY PLEA, WAIVER OF TRIAL BY JURY
AND ASSOCIATED RIGHTS, STIPULATION, AND ACKNOWLEDGMENT OF
LIMITED APPELLATE REVIEW**

2) I, _____, Defendant in the above-entitled action, acknowledge and agree that the court's pretrial ruling described in paragraph 1 of this document is dispositive of this case or that a trial will be unnecessary if I prevail on appeal.

3) I maintain my plea of not guilty.

4) I have been advised by the court of my right to a trial by jury. I understand that:

- a. a jury is composed of the number of jurors required by law, selected from the community,
- b. I may participate in the selection of the jurors,
- c. the jury's verdict must be unanimous, and
- d. if I waive a jury, the judge alone will determine my guilt or innocence.

Having had an opportunity to consult with counsel, I waive my right to a trial by jury.

5) I have had an opportunity to consult with counsel regarding the following trial rights. I acknowledge and waive my rights:

- a. to testify at trial,
- b. to have the prosecution witnesses testify in open court in my presence,
- c. to question those prosecution witnesses, and
- d. to require any favorable witnesses to testify for me in court.

6) I stipulate to the prosecution's evidence in a trial to the court. I acknowledge that the court will receive and consider the prosecution's evidence and that the court may find me guilty based on that evidence. Specifically, I stipulate to the following evidence **(describe stipulations or refer to on-the-record recitation of stipulations):**

7) I acknowledge that appellate review in this case will only be of the pretrial ruling described in paragraph 1 of this document and not of my guilt or of other issues that could arise at a contested trial.

Dated: _____

Signature of Defendant
 Name: _____
 Street Address: _____
 City/State/Zip: _____
 E-mail address: _____