REPORT AND PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE FOR A COMPLETE STYLISTIC REVISION OF THE RULES

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

CX-84-2137

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INTRODUCTION

In June 2007, the Advisory Committee on Rules of Criminal Procedure embarked on a project to complete a full review and stylistic revision of the Rules. Though the Criminal Rules of Procedure are dynamic, requiring frequent amendment due to case law and statutory amendment, the Rules had not been comprehensively reviewed for at least 10-15 years. As a result, some Rules have become outdated or unwieldy. At its June, 2007 meeting, the Committee agreed to review all the Rules with the goal of stylistically revising and streamlining the Rules without making substantive changes.

The purpose of this report is to: (1) explain the guiding principles and objectives of the revision project and how it was conducted; (2) highlight as to each Rule revisions to which the reader may wish to pay particular attention to ensure that no unintended substantive change has occurred; (3) advise the Court of substantive issues the Committee identified during the revision project and plans to review in the future; and (4) present for the Court's consideration a comprehensive set of proposed amendments based on the revisions made.

METHODOLOGY

After approving the concept of a full review and stylistic revision of the Rules in June 2007, the Committee appointed a Revision Subcommittee to develop a methodology for the project. The Subcommittee included Justice Paul Anderson, Leonardo Castro, Michael Junge, Kelly Lyn Mitchell, Mark Nyvold, and Paul Scoggin.

The Revision Subcommittee quickly identified some key objectives for the project:

1. Eliminate wordiness and archaic language.
2. Achieve consistency in phraseology among Rules that address the same subject.
3. Reorganize individual Rules structurally to make them easier to read.
4. Eliminate illogical organization and clarify intended meaning.
5. To the extent feasible, change the passive voice to active voice.
6. Achieve a level of clarity that will enable those who have not used the Rules previously to feel confident that they understand them.

These objectives have remained constant, and have guided the project since its inception.

At the outset, Justice Paul Anderson suggested to fellow Subcommittee members that a short book authored by Bryan A. Garner entitled *Guidelines for Editing and Drafting Court Rules* (referred to below as "Garner") would be a good model to follow in achieving these objectives. To test this concept, the Subcommittee engaged in a test run and attempted to revise Rules 28 and 29 according to Garner with the stated objectives in mind. The Subcommittee learned several valuable insights from this test run.

First, the Subcommittee found that while the Garner text was short and easy to read, it took time to internalize and implement the stylistic conventions and principles stated in the text. For that reason, the Subcommittee determined it would propose to the full Committee that all of the initial drafting work be done at the Subcommittee level, and that it would be the role of the full Committee to perform a final review of the revised text. This process would allow for yet another review of the text of each Rule to ensure that Garner's principles were being applied.

Second, the Subcommittee realized that the scope of the project needed to be clearly defined and endorsed by the full Committee. Subcommittee members conceived of three possible options: (1) confine the work to revising grammar and style according to Garner; (2) do option 1 along with reorganizing some Rules as necessary, and fixing a few substantive issues with the full Committee's approval; or (3) do options 1 and 2 *and* make extensive substantive revisions.

The Subcommittee concluded that tackling a stylistic *and* substantive revision would be too complex because it would be time intensive and it would be difficult to address all potential substantive issues that could arise during the review. Moreover, it was thought the length of time that approach would take might result in the Committee losing sight of the needed stylistic revision. The Subcommittee decided to recommend option 2 to the full Committee, and developed the following guidelines:

- The Subcommittee, with limited exceptions, would follow Garner.
- Some reorganization of the Rules would be permissible to achieve the overall objectives.
- If a member found terms or concepts repeated throughout a Rule that were more broadly applicable, the member could suggest an alternative placement that would reduce or eliminate the repetition.
- The Subcommittee could recommend some minor substantive changes if the full Committee agreed the changes would be relatively noncontroversial and should be addressed immediately.
- The Subcommittee would identify and document all other substantive issues for the full Committee's future consideration (see Appendix).

In addition, the Subcommittee developed the following stylistic conventions to supplement those stated in the Garner text.

- For all numbers, use numerals instead of the word that represents the number.
- With limited exception, state time periods in days rather than months.
- Use "court" rather than "judge" except when "judge" is more appropriate.
- Use "district court" rather than "trial court."
- Refer to "prosecutor" rather than "prosecuting attorney."
- Use bullet points if setting out a laundry list of items; use the next outline level (letter or number) for listing alternatives or successive requirements.
- When reviewing the comments, remove any language that merely repeats the Rule, and retain primarily the following:

- important source derivation information;
- case law necessary to understanding the Rule, particularly a new Rule; and
- other information important for practitioners and judges to know in order to apply the Rule.

The Subcommittee recognized that the numbering scheme of the Rules is not consistent from Rule to Rule. However, the Subcommittee deliberately chose not to adopt a new numbering scheme because a change of that magnitude would impact practitioners' ability to perform legal research, and it would unduly lengthen the time needed to complete the revision process. The Subcommittee attempted to keep any renumbering necessitated by a stylistic and/or organizational revision to a minimum; utilizing renumbering only in those situations where it comported with the objectives of the revision.

To complete the revision within a reasonable time, the Subcommittee divided responsibility for revising the Rules between the Subcommittee members,[1] and agreed to establish a regular meeting schedule to review each member's work.

On September 15, 2007 the Subcommittee presented its methodology to the full Committee and obtained the Committee's approval to proceed with the revision project. The full Committee committed to making review of the Subcommittee's revisions a standing item on its regular meeting agenda through completion of the project.

The Subcommittee met more than 45 times over the next 19 months. In preparation for each Subcommittee meeting, at least one or two Subcommittee members applied the methodology stated above to one or more of the Rules that had been assigned to them. The members documented proposed amendments in draft form, and then during the course of a Subcommittee meeting, the members reviewed and discussed the proposed amendments and revised them as necessary. Completed Rules were then presented to the full Committee at its regular meetings. The full Committee reviewed the Rules and often made further revisions or changes to the proposed revisions. Once the full Committee was satisfied with the revisions, it preliminarily approved the revised Rule(s) by voice vote.

Following preliminary approval, the Rules entered the final editing and cite checking phase of the project. This phase was overseen by committee member Scott Christenson, and was completed by the current law clerks for the Supreme Court: Stephen Chu, Lauren Galgano, Laura Hammargren, Daniel Hammer, Adam Hansen, Alethea Huyser, Rick Linsk, Amanda Porter, Beth Jenson Prouty, and Kevin Riach. The editing process consisted of four main components: (1) confirming that the current language of each Rule is accurate in the left hand column of the template (showing markup); (2) examining the application of the stylistic conventions to the

[1] To avoid a conflict with the Supreme Court's authority to promulgate amendments, Justice Paul Anderson did not revise any Rules during the revision process or attend the Subcommittee meetings at which members discussed revisions. Justice Anderson did participate in several initial meetings to define the methodology for the revision and establish a timeline for the project, and he subsequently secured resources for and oversaw the final editing of the Rules.

proposed revised language; (3) verifying all statutory, rule, and case law citations; and (4) checking all cross-references for accuracy.

The full Advisory Committee on Rules of Criminal Procedure met on April 18, 2009, to review the complete set of Rules with the revisions incorporated as proposed amendments. On that date, the Committee approved the entire set of proposed amendments and this report.

During the revision process, the Committee approved some substantive changes to the Rules based on recommendations provided by the Subcommittee. This Report does not attempt to identify specific substantive changes because the full Committee believes that would imply that nothing the Committee presently considers as a non-substantive stylistic change could ever be construed to have worked a change in substantive meaning. Although the Subcommittee and the full Committee have been careful in their stylistic revisions to avoid substantive changes except where the full Committee expressly intended and approved a substantive change, it is inevitable that some of what the Committee considers to be stylistic revision may be viewed by practitioners and judges as a substantive change in meaning.

The full Committee therefore believes that the best course is to state that all the proposed amendments to the Rules are clearly identified, that the vast majority of the revisions proposed as amendments are not intended to work any substantive changes, and that in the few instances where the Committee did intend to make a substantive change, the change should be readily apparent. And as with any Rule change, but especially here where every Rule has been revised, practitioners and judges should re-read all the Rules to ensure that practitioners and judges retain their familiarity with and understanding of the Rules, and new practitioners should of course do this to acquire an initial familiarity and understanding of the Rules.

PRESENTATION OF THE PROPOSED AMENDMENTS

The complete set of Rules with proposed amendments immediately follows the narrative section of this report. For the reasons given below, the Committee presents the proposed amendments differently in this report than the way it traditionally has presented amendments in other reports.

Because the stylistic revisions resulted in an extensive set of proposed amendments, the Committee believes it is important to present the proposed amendments in a format that is easy to read, and allows the reader to more quickly comprehend how the Rule originally read, what the proposed amendments are, and how the Rule will read once the proposed amendments are adopted. To accomplish this goal, the Subcommittee developed a Rule template. The components of the template are as follows:

- The overall template is a two-column table.
- The left column contains the original text of the Rule, and the proposed amendments are indicated in track-changes format (an overstrike indicates deleted text; underlining indicates new or relocated text).

- The right column contains the text of the Rule as the Committee proposes it will read if the Committee's proposed amendments are adopted.
- Additional spacing is used in the right column so that the various subdivisions, paragraphs, subparagraphs, etc. are aligned horizontally with the same part of the Rule in the left column, which should make it easier to compare the original and the revised texts.

Each Rule was originally contained within a separate template document. The 36 individual Rule templates have been combined with this narrative and the appendix to create this completed, final report.

PROPOSED AMENDMENTS MERITING PARTICULAR ATTENTION

A quick review of the extensive strike-through and underlining will reveal that most of the revisions involve restating the current Rule to eliminate wordiness, repetition, and archaic terms, incorporating the active voice, clarifying intended meaning, and providing structural reorganization to make the Rules easier to read and understand. The full Committee does not believe it is feasible or advisable to attempt to discuss each of these revisions in detail. However, because some revisions involve changes such as moving text from one part of the Rule to another, moving text from one Rule to another Rule altogether, or consolidating duplicative statements, the Committee considers it appropriate to provide in summary form a discussion of several of the more significant changes of this sort. The Committee makes no effort to identify every such change, and as recommended earlier in this Report, the revisions should occasion a complete review of all the Rules by practitioners and judges. With these provisos in mind, the Committee provides the following discussion of proposed amendments to which the reader may wish to pay particular attention.

All Rules

Generally: Several Rules reference procedures that were in effect before the Rules of Criminal Procedure were adopted, but have since been abolished. The Committee believes the Rules of Criminal Procedure have been in effect long enough that awareness of these abolitions is engrained in the legal culture. Therefore, the Committee proposes that these Rules be deleted. *See, e.g.,* current Rule 17.02, subd. 5 (bill of particulars abolished).

Rule 2

Rule 2.01: The second paragraph of Rule 2.01, subd. 3 relating to the complaint currently reads:

> Any complaint, supporting affidavits, or supplementary sworn testimony made or taken upon oath before the issuing judge or judicial officer pursuant to this Rule may be made or taken by telephone, facsimile transmission, video equipment, or similar device at the discretion of such judge or judicial officer.

Similarly, Rule 4.03, subd. 2 contains this language:

> Any written or oral facts or other information submitted upon oath to establish probable cause may be made or taken by telephone, facsimile transmission, video equipment or similar device at the discretion of the reviewing judge or judicial officer.

Initially it was unclear to Subcommittee members whether the text purports to permit the documents or the oath to be "made or taken by electronic means." It was not until the comments were studied that it became clear the original intent of the language was to allow the judge to take oral testimony in support of the probable cause statement remotely, and to allow the judge to administer an oath to the person providing that oral testimony by electronic means. The revised provisions, which reflect this intent, appear in revised Rules 2.01, subds. 2 and 3, and revised Rule 4.03, subd. 2.

Rule 4

Rule 4.03: See explanation for Rule 4.03, subd. 2 under Rule 2.01.

Rule 5

Rule 5.01: When Rules 5 and 8 were originally drafted, Minnesota had separate county and district court systems. Rule 5 related to the first appearance in county court, and Rule 8 to the first appearance in district court. The Rules were amended when the courts were consolidated, but some question remains as to the need for distinct Rule 5 and 8 hearings. To better define the differences between these hearings, the Committee drafted new Rules 5.01 and 8.01, which set forth the purpose of each hearing. The content of both of these Rules came from the existing text and comments to Rules 5 and 8.

The Committee found existing Rule 5.01 to be long and unwieldy. The Rule has been broken out by topic so the procedures relating to appointing an interpreter are included in revised Rule 5.02, and procedures related to the statement of rights are included in revised Rule 5.03.

The statement of rights currently requires the court to inform a defendant that if the offense is a designated gross misdemeanor and the defendant has had an opportunity to consult with counsel, the defendant may enter a guilty plea (*see* current Rule 5.01(f); revised Rule 5.03(h)). However, Rule 5 has no corresponding procedures to implement the taking of that plea. New Rule 5.07 has been created for this purpose. This change mirrors the procedure for taking a plea in misdemeanor cases (*see* current Rule 5.04; revised Rule 5.06).

Rule 5.02: The standards for public defender eligibility and procedures for conducting a financial inquiry for public defender eligibility in current Rule 5.02, subds. 3 and 4 (*see* revised Rules 5.04, subds. 3 and 4) were removed and replaced with cites to the parallel statutory provisions. This revision was made because the legislature rather than the Supreme Court determines how public defender resources are allocated (within the confines of constitutional requirements). These provisions come verbatim from statute. The procedure relating to partial eligibility and reimbursement (*see* current Rule 5.02, subd. 5; revised Rule 5.04, subd. 5) was

retained, however, because no parallel provision exists in statute, and to remove it would have been a substantive change.

Rule 5.08: New Rule 5.08 was created to clarify that a defendant charged with a felony may not enter a plea at the Rule 5 hearing. This revision was done structurally because the Rule includes procedures for entry of pleas in misdemeanor and gross misdemeanor cases, and as a matter of policy to ensure the defendant has an opportunity to consult with counsel prior to entering a plea to a felony.

Rule 6

Rule 6.01: This Rule has been substantially reorganized. Currently, the Rule sets forth the principles for issuing a citation in lieu of arrest or continued detention. In some cases, issuance of a citation is mandatory; in others it is permissive. The Rule is reorganized so that misdemeanors are addressed in revised subdivision 1, felonies and gross misdemeanors are addressed in revised subdivision 2, and principles applicable to all offense levels are addressed in revised subdivision 3. In addition, subdivision 1 is further reorganized so that provisions relating to issuance of a citation for a misdemeanor offense at the scene is addressed in revised paragraph (a), issuance of a citation for a misdemeanor at the detention center is addressed in revised paragraph (b), issuance of a citation for misdemeanors not punishable by incarceration is addressed in revised paragraph (c), and reporting requirements when a person is nevertheless detained are addressed in revised paragraph (d). The grounds for continued detention, which are currently repeated at each point at which detention could occur, are contained within revised subdivision 1(a) and every other location now cross-references this text.

Rule 7

Rule 7.04: The misdemeanor discovery provision that is currently in Rule 7.04 has been moved to Rule 9.04 so that all of the discovery provisions will be contained within one Rule. Rule 7.04 now cross-references the discovery provisions in Rules 9.01 and 9.02 for gross misdemeanor and felony cases, and Rule 9.04 for misdemeanor cases.

Rule 8

Rule 8.01: See comment under Rule 5.01 regarding the purpose statement in newly-created Rule 8.01.

The first paragraph of current Rule 8.01 (*see* revised Rule 8.02) was a leftover remnant from the days when the first appearance under Rule 5 occurred in county court, and Rule 8 related to the first appearance in district court. This language has been removed in revised Rule 8.02.

Rule 8.02: Though it appears existing Rule 8.02 (Plea of Guilty) has been deleted, the language has been relocated to revised Rule 8.02, subd. 1.

Rule 8.06: Though it appears existing Rule 8.06 (Conditions of Release) has been deleted, the language has been relocated to revised Rule 8.01(d).

Rule 9

Rule 9.01: This Rule has been structurally reorganized so that within the current discovery categories the prosecutor's discovery obligations appear in list form rather than block text. The two provisions relating to disclosure of statements (in current Rule 9.01, subd. 1(1)(a) and subd. 1(2)) have been consolidated and streamlined and appear in the revised Rule 9.01, subd. 1(2).

Rule 9.02: As was done in Rule 9.01, a defendant's discovery obligations have been reorganized into list form in order to make the Rule more readable. In addition, the provisions relating to notice of defense, defense witnesses, and criminal record have been reorganized so that each concept is now contained within its own section (compare current Rule 9.02, subd. 1(3) to revised Rule 9.02, subd. 1(3), (5), and (8)). The Rule has also been reorganized so additional detail related to entrapment and alibi immediately follow the notice-of-defense requirement.

Rule 9.04: See explanation under Rule 7.04.

Rule 9.05: The text of newly-created Rule 9.05, relating to charges that may be made for reproduction, was taken from current Rule 7.04 and current Rule 9.03, subd. 10. Because the content from Rule 7.04 was moved to Rule 9, the Committee determined it would be appropriate to move the content about charges to a new Rule so that practitioners and judges would understand the provision applies to discovery in all cases regardless of offense level.

Rule 10

Rule 10.03: As currently written, Rule 10.03 provides that a defendant waives any defenses, objections, or requests not brought by motion under Rule 10.01. Because Rule 10.03 defines the result of a failure to act under Rule 10.01, it appeared appropriate to combine the two Rules. The content from Rule 10.03 was moved to newly-created subdivision 2 of revised Rule 10.01.

Rule 11

Rule 11.02: Text defining the scope of the Omnibus Hearing is currently scattered throughout the Rule making it difficult for practitioners – especially those who are newer to practice – to know the full panoply of determinations that may take place. The revisions to Rule 11.02 are intended to provide a roadmap. The content of revised Rule 11.02 was taken from Rules 8.03, 11.02, and 11.04.

Rule 11.03: New Rule 11.03 sets forth procedures that are generally applicable during the Omnibus Hearing. Paragraph (a) allowing cross-examination was taken from current Rule 11.03. Paragraph (b) relating to the sequestering of witnesses was taken from current Rule 11.11.

Rule 11.04: Rule 11 sets forth specific procedures relating to two motions that may be heard during the Omnibus Hearing: a probable cause motion and an aggravated sentence motion. But as Rule 11 is currently written, some of this information is found in current Rule 11.03, and some is found in current Rule 11.04. Revised Rule 11.04 reorganizes this content into one Rule.

Rule 11.07: Current Rule 11.07 states the time period for Omnibus Hearing determinations. The Rule is problematic, however, because current Rule 11.07 requires a decision within 30 days after the Rule 8 hearing while at the same time, current Rule 8.04 provides that the Omnibus Hearing must be scheduled within 28 days after the Rule 8 appearance. These requirements create a situation in which a judge might have only 2 days to issue a decision. To resolve this problem, the Committee established a specific time period for scheduling the Omnibus Hearing and for issuing findings. *See* revised Rule 11.01(a) (requiring the hearing to be held within 42 days of the Rule 5 appearance if it was not combined with the Rule 8 hearing, or within 28 days of the Rule 5 appearance if it was combined with the Rule 8 hearing) and revised Rule 11.07 (requiring the court to make findings within 7 days of the Omnibus Hearing).

Rule 11.10: Revised Rule 11.10 appears to be new text. It is in fact taken from current Rule 11.08. The text has been moved to the end of Rule 11 because this revision was thought to provide a more appropriate location for information about the record and transcripts.

Rule 13

Rule 13: The Committee recommends that Rule 13 be deleted. This Rule sets forth the procedure for the arraignment. But as indicated in the comments to Rule 13, the arraignment takes place at the Rule 8 hearing. It appeared illogical that a Rule describing the arraignment would be placed so far numerically from the Rule specifying the procedures applicable to the arraignment. Moreover, some of the content in Rule 13 is repetitive of content in Rule 8. To streamline the Rules, all necessary content from Rule 13 was retained and moved to Rule 8.

Rule 14

Rule 14.03: Currently, though Rule 14.03 is entitled "Time of Plea," it does not set forth the points at which a plea may be offered, but rather contains a procedure for requesting a special appearance to enter a guilty plea. In reviewing Rules 5, 8, 11, 13, and 14 the Committee found there is no place that summarizes in one spot which pleas can be entered and when. Rule 14.03 as revised now sets out the earliest points at which a plea may be entered based upon the level of the offense. The information in this Rule was derived from text in current Rules 5, 8, 11, 13, and 14.

Rule 15

15.01: Current Rule 15.01 contains much information about what must occur during the taking of a plea, and what the court must ensure a defendant understands before accepting the plea. Within the procedure, there are some rights the court must inform the defendant about directly, and there are others the court must ensure the defendant covered with counsel. Revised Rule

15.01 has been reorganized so that these different categories of responsibility are more clearly delineated. *Compare* revised Rule 15.01, paragraph 4 (the judge must ensure) *with* revised Rule 15.01, paragraph 6 (the judge must ensure defense counsel has told the defendant).

Rule 17

Rule 17.03: This Rule relating to joinder of defendants currently contains two paragraphs: paragraph (a) for joinder in felony and gross misdemeanor cases; paragraph (b) for joinder in misdemeanor cases. However, the underlying Rule for these separate offense levels is the same: defendants may be tried separately or jointly at the court's discretion. For that reason, the misdemeanor paragraph was deleted, and the title of paragraph (a) was removed so it is clear the procedure applies to any level of offense.

Rule 18

Rule 18.02: The process for raising objections to the grand jury or individual grand jurors by motion to dismiss the indictment was moved from current Rule 18.02 to new Rule 18.09. The current placement is awkward because the procedures for challenging the grand jury precede the procedures for establishing the grand jury.

Rule 19

Rule 19.04: Current Rule 19 contains procedures for notice of Omnibus issues, notice of other offenses, notice of intent to seek an aggravated sentence, and completion of discovery. These procedures are repetitive of the notice procedures already in Rule 7. The Committee has deleted the provisions from Rule 19, and included cross-references stating that the procedures in Rule 7 apply to cases prosecuted by indictment.

Rule 20

Rule 20.01: Subdivision 1 of this Rule has been divided into two subdivisions in recognition of the fact that competency to waive counsel is a threshold issue that is separate from the determination of competency to proceed.

Current 20.01, subd. 4(2)(b) and 20.02, subd. 8(2) set forth the procedures to be followed when an individual is found not guilty by reason of mental illness or deficiency. The text in both locations references commitment to the now obsolete title of "commissioner of public welfare." The Committee recognizes this language is antiquated. However, the Committee believes it would require an extensive substantive revision to bring the procedure in line with current practice. Rather than address this issue during the stylistic revision, the Committee documented the issue on a punch list of possible future substantive changes (*see* explanation of the punch list below) so it could be corrected in the future.

Rule 20.02: As this Rule is currently written, subdivision 6 addresses both: (1) trial procedure when a defendant relies on the defense of mental illness or deficiency together with a defense of not guilty; and (2) use of statements derived from the Rule 20.02 examination. The proposed amendments untangle these two concepts so that the use of statements is addressed in subdivision 6 and trial procedure is addressed in new subdivision 7.

See note about Rule 20.02, subd. 8(2) above.

Rule 20.04: This is a new Rule created from content formerly located in Rule 20.02, subd. 7. The text permits the court to order examinations simultaneously under Rules 20.01, 20.02, and Minnesota Statutes, chapter 253B. Because the language in this paragraph is broadly applicable to the procedures in Rule 20, the language should stand on its own rather than appear in Rule 20.02.

Rule 26

Rule 26.02: A new paragraph (a) has been added to Rule 26.02, subd. 4(3) explaining the three allowable methods for jury selection. Each method already exists in the Rules, but the presentation was lengthy, awkward, and confusing. The addition of this paragraph is meant to serve as a roadmap to practitioners as to the main components of each jury selection method, and when each is most appropriate.

Rule 27

Rule 27.03: In revising Rule 27, the Committee determined it would be helpful to divide subdivision 6 into two subdivisions: the first (revised 27.03, subd. 6) addressing the requirement that a verbatim record be kept of the sentencing proceeding; the second (revised 27.03, subd. 7) addressing the content of the sentencing order. This change altered the numbering of all subsequent subdivisions. The Committee recognized, however, that Rule 27.03, subd. 9 is one of the most cited provisions in the Rules because it relates to correction of the sentence. To maintain the numbering of that subdivision, the Committee moved the content of current subdivision 8 (clerical mistakes) to revised Rule 27.03, subd. 10.

Current Rule 27.03, subd. 1(C) requires the district court to inform the parties if it is considering a departure. In the wake of *Blakely v. Washington*, 542 U.S. 296 (2004), the district court can no longer determine on its own to impose an upward departure. The potential for an aggravated sentence must be raised by the prosecutor as provided in Rule 7. But *Blakely* did not have an impact on the district court's ability to determine on its own to impose a mitigated departure. New Rule 27.03, subd. 1(B)(3) reflects this.

27.05: Current Rule 27.05, subd. 1(2)a-d sets forth some conditions that are typically imposed as conditions of diversion. However, the list is not exhaustive, and in practice, many more conditions are being imposed. The Committee chose to replace this language with a broader statement allowing the district court to impose any condition that could be imposed as a condition of probation except incarceration. *See* revised Rule 27.05, subd. 1(2)(b).

Rule 30

Rule 30.01: This Rule, which permits the prosecutor to dismiss a complaint, explicitly references successful completion of diversion as a ground for dismissal. This provision may have been added to the Rule when diversion was a relatively new concept. But while diversion is one possible ground for dismissal, it is not the only ground, so it does not make sense to explicitly refer to it in the Rule. The Committee has proposed moving the concept to the comments.

FORMS

There are about 50 forms appended to the Rules of Criminal Procedure. The Committee recognizes that this revision has an impact on some of the content of those forms. However, this revision project did not include their review. The Committee plans to file a later report with recommendations regarding the content of the forms.

THE PUNCH LIST

As stated in the methodology section, the Committee agreed that as the Subcommittee reviewed the Rules, it should identify and document substantive issues that the Committee should potentially address, but that addressing them as part of the stylistic revision project would prove to be too controversial and too time consuming. The Subcommittee labeled these potential revisions "the punch list." Some examples of items on the list are clarification of the definition and usage of the term "tab charge," examining whether double jeopardy and serialized prosecution are pleas or defenses, and clarifying whether the prosecutor must proceed by indictment or complaint for offenses punishable by life imprisonment. The complete list is attached as the Appendix.

The Committee plans to begin addressing the items on the punch list immediately after submission of this report. The Committee does not expect that it will develop proposed amendments to address every item on the list. In some cases, Committee discussion may reveal legitimate policy reasons for retaining the current text of the Rule. In other cases, the Committee may determine that a change should be made. The Committee will consider every item, and will document the outcome of its discussions.

Respectfully Submitted,

ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

Proposed Revisions to Minn. R. Crim. P. 1

Original Language Showing Markup	Proposed Revised Language
Rule 1. Scope~~, Application, General~~and Purpose ~~And Construction~~of the Rules	**Rule 1. Scope and Purpose of the Rules**
Rule 1.01 Scope and Application	**Rule 1.01 Scope and Application**
These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the district courts in the State of Minnesota. ~~Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.~~	These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the district courts in the State of Minnesota.
Rule 1.02 Purpose and Construction	**Rule 1.02 Purpose and Construction**
These rules are intended to provide ~~for the~~a just~~, speedy~~ determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay. The rules must be applied without ~~the purpose or effect of~~ discrimination based upon race, color, creed, religion, national origin, sex, marital status, ~~status with regard to~~ public ~~-~~ assistance status, disability, ~~handicap~~including disability in communication, sexual orientation, or age. ~~They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.~~	These rules are intended to provide a just determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay. The rules must be applied without discrimination based upon race, color, creed, religion, national origin, sex, marital status, public-assistance status, disability, including disability in communication, sexual orientation, or age.
Rule 1.03 Local Rules by District Court	**Rule 1.03 Local Rules by District Court**
A~~ny~~ court may recommend local rules governing its practice ~~not in~~if they do not conflict with these rules or with the General Rules of Practice for the District Courts. ~~and those~~ Local rules ~~shall~~ become effective only if ~~as~~ ordered by the Supreme Court.	A court may recommend local rules governing its practice if they do not conflict with these rules or with the General Rules of Practice for the District Courts. Local rules become effective only if ordered by the Supreme Court.
Rule 1.04 Definitions	**Rule 1.04 Definitions**
~~**(a) Clerk of Court.** References in these rules to clerks or deputy clerks of court shall~~	

Original Language Showing Markup	Proposed Revised Language
~~include court administrators and deputy court administrators.~~	
(a) Misdemeanor. Unless these rules direct otherwise, "misdemeanor," as used in these rules, includes state statutes, local ordinances, charter provisions, or rules or regulations punishable – either alone or alternatively – by a fine or imprisonment of not more than 90 days.	(a) Misdemeanor. Unless these rules direct otherwise, "misdemeanor," as used in these rules, includes state statutes, local ordinances, charter provisions, or rules or regulations punishable – either alone or alternatively – by a fine or imprisonment of not more than 90 days.
(b) Designated Gross Misdemeanor~~s~~. As used in these rules, ~~the term~~ "designated gross misdemeanor~~s~~" ~~refers to~~is a gross misdemeanor~~s~~ charged or punishable under Minnesota~~.~~ Statutes~~,~~ Sections ~~§~~ 169A.20, ~~Minn. Stat. §~~ 169A.25, ~~Minn. Stat. §~~ 169A.26, or ~~Minn. Stat. §~~ 171.24.	(b) Designated Gross Misdemeanor. As used in these rules, "designated gross misdemeanor" is a gross misdemeanor charged or punishable under Minnesota Statutes, sections 169A.20, 169A.25, 169A.26, or 171.24.
(c) Tab Charge. As used in these rules, ~~the term~~ "tab charge" is a brief statement of the ~~offense~~ charge~~d including~~ entered in the record by the court administrator that includes a reference to the statute, rule, regulation, ordinance, or other provision of law ~~which~~ the defendant is alleged to have violated~~ which the clerk shall enter upon the records~~. A tab charge is not synonymous with "citation" as defined by Rule 6.01.	(c) Tab Charge. As used in these rules, "tab charge" is a brief statement of the charge entered in the record by the court administrator that includes a reference to the statute, rule, regulation, ordinance, or other provision of law the defendant is alleged to have violated. A tab charge is not synonymous with "citation" as defined by Rule 6.01.
(d) Aggravated Sentence. As used in these rules, ~~the term~~ "aggravated sentence" ~~refers to~~is a sentence that is an upward durational or dispositional departure from the presumptive sentence provided for in the Minnesota Sentencing Guidelines based ~~up~~on aggravating circumstances or a statutory sentencing enhancement.	(d) Aggravated Sentence. As used in these rules, "aggravated sentence" is a sentence that is an upward durational or dispositional departure from the presumptive sentence provided for in the Minnesota Sentencing Guidelines based on aggravating circumstances or a statutory sentencing enhancement.
Rule 1.05 Use of Interactive Video Teleconference in Criminal Proceedings	**Rule 1.05 Use of Interactive Video Teleconference in Criminal Proceedings**
Subd. 1. Definitions.	Subd. 1. Definitions.
(1) ITV. "ITV" refers to interactive video teleconference.	(1) ITV. "ITV" refers to interactive video teleconference.
(2) Terminal Site. A "terminal site" is any location where ITV is used for any part of a court proceeding.	(2) Terminal Site. A "terminal site" is any location where ITV is used for any part of a court proceeding.
(3) Venue County. The "venue county" is the	(3) Venue County. The "venue county" is the

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county where pleadings are filed and hearings are held under current court procedures. (4) District. The "district" is the judicial district in which the venue county is located. Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure ~~shall~~must be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. ~~2~~3, and by phone in Rule 26.03, subd. 1(3)4. Subd. 3. Permissible Use of ITV. (1) Felony and Gross Misdemeanor Proceedings. ITV may be used in felony and gross misdemeanor proceedings to conduct the following criminal hearings: (a) Rule 5 or Rule 6 Hearings. A defendant in custody may appear by ITV before any available judge of the district ~~by ITV~~ for a Rule 5 or Rule 6 hearing if no judge is available in the venue county. (b) Rule 8 ~~and Rule 13~~ Hearings. A defendant may appear by ITV before any available judge of the district ~~by ITV~~ for a Rule 8 ~~or Rule 13~~ hearing if no judge is available in the venue county. No plea of guilty may be taken by ITV unless the court and all parties agree, and the defendant and defendant's attorney are located at the same terminal site. (c) Rule 11 Hearings. A defendant may appear by ITV before any available judge of the district ~~by ITV~~ for the purpose of waiving an omnibus hearing. (d) Other Hearings. A defendant or the defendant's counsel on behalf of the defendant may appear by ITV before any available judge of the district ~~by ITV~~ for any hearing for which the defendant's personal presence is not required ~~pursuant to~~under Rule 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.	county where pleadings are filed and hearings are held under current court procedures. (4) District. The "district" is the judicial district in which the venue county is located. Subd. 2. Appearance; How Made. Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure must be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 3, and by phone in Rule 26.03, subd. 1(3)4. Subd. 3. Permissible Use of ITV. (1) Felony and Gross Misdemeanor Proceedings. ITV may be used in felony and gross misdemeanor proceedings to conduct the following criminal hearings: (a) Rule 5 or Rule 6 Hearings. A defendant in custody may appear by ITV before any available judge of the district for a Rule 5 or Rule 6 hearing if no judge is available in the venue county. (b) Rule 8 Hearings. A defendant may appear by ITV before any available judge of the district for a Rule 8 hearing if no judge is available in the venue county. No plea of guilty may be taken by ITV unless the court and all parties agree, and the defendant and defendant's attorney are located at the same terminal site. (c) Rule 11 Hearings. A defendant may appear by ITV before any available judge of the district for the purpose of waiving an omnibus hearing. (d) Other Hearings. A defendant or the defendant's counsel on behalf of the defendant may appear by ITV before any available judge of the district for any hearing for which the defendant's personal presence is not required under Rule 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.

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ITV ~~may not~~cannot be used to conduct a trial, sentencing, contested omnibus hearing, or any other contested matter except as provided ~~herein~~in this rule.	ITV cannot be used to conduct a trial, sentencing, contested omnibus hearing, or any other contested matter except as provided in this rule.
(2) Misdemeanor Proceedings. A defendant may appear by ITV in misdemeanor proceedings before any available judge of the district ~~by ITV~~ for any of the following:	(2) Misdemeanor Proceedings. A defendant may appear by ITV in misdemeanor proceedings before any available judge of the district for any of the following:
(a) Arraignment;	(a) Arraignment;
(b) Plea;	(b) Plea;
(c) Sentencing.	(c) Sentencing.
A defendant or the defendant's counsel on behalf of the defendant may also appear by ITV before any available judge of the district ~~by ITV~~ for any hearing for which the defendant's personal presence is not required ~~pursuant to~~under Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.	A defendant or the defendant's counsel on behalf of the defendant may also appear by ITV before any available judge of the district for any hearing for which the defendant's personal presence is not required under Rules 14.02, subd. 2 and 26.03, subd. 1(3) if the court and all parties agree to the ITV appearance.
ITV ~~may not~~cannot be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided ~~herein~~in this rule.	ITV cannot be used to conduct a trial, contested pretrial hearing, or any other contested matter except as provided in this rule.
(3) Petty Misdemeanor and Regulatory or Administrative Criminal Offenses. A defendant may appear by ITV before any available judge of the district ~~by ITV~~ for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.	(3) Petty Misdemeanor and Regulatory or Administrative Criminal Offenses. A defendant may appear by ITV before any available judge of the district for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.
Subd. 4. Request for In-Person Hearing; Consent Requirements.	Subd. 4. Request for In-Person Hearing; Consent Requirements.
(1) Rule 5 or Rule 6 Hearings. When a defendant appears before the court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within ~~three~~3 business days of the ITV hearing and ~~shall be~~is deemed a continuance of the ITV hearing.	(1) Rule 5 or Rule 6 Hearings. When a defendant appears before the court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within 3 business days of the ITV hearing and is deemed a continuance of the ITV hearing.

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(2) Other Hearings; Consent. In all proceedings other than a Rule 5 or Rule 6 hearing, the defendant must consent to appearing by ITV. If the defendant does not consent to appear by ITV, an in-person court appearance for that hearing ~~shall~~must be scheduled to be held within the time limits as otherwise provided by these rules or other law.	(2) Other Hearings; Consent. In all proceedings other than a Rule 5 or Rule 6 hearing, the defendant must consent to appearing by ITV. If the defendant does not consent to appear by ITV, an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by these rules or other law.
Subd. 5. Location of Participants.	Subd. 5. Location of Participants.
(1) Defendant's Attorney. The defendant and the defendant's attorney ~~shall~~must be present at the same terminal site ~~from which the defendant appears~~ except in unusual or emergency circumstances, and then only if all parties agree on the record. This exception for unusual or emergency circumstances does not apply to felony or gross misdemeanor proceedings at which a guilty plea is taken.	(1) Defendant's Attorney. The defendant and the defendant's attorney must be present at the same terminal site except in unusual or emergency circumstances, and then only if all parties agree on the record. This exception for unusual or emergency circumstances does not apply to felony or gross misdemeanor proceedings at which a guilty plea is taken.
(2) ~~Prosecuting Attorney~~Prosecutor. Subject to paragraph (4), the ~~prosecuting attorney~~prosecutor may appear from any terminal site.	(2) Prosecutor. Subject to paragraph (4), the prosecutor may appear from any terminal site.
(3) Judge. Subject to paragraph (4), the judge may appear from any terminal site.	(3) Judge. Subject to paragraph (4), the judge may appear from any terminal site.
(4) Defendant's Attorney or ~~Prosecuting Attorney~~ Prosecutor at Same Terminal Site as Judge. When the right to counsel applies, ITV ~~may not~~cannot be used in a situation in which only the defense attorney or ~~prosecuting attorney~~prosecutor is physically present before the judge unless all parties agree on the record.	(4) Defendant's Attorney or Prosecutor at Same Terminal Site as Judge. When the right to counsel applies, ITV cannot be used in a situation in which only the defense attorney or prosecutor is physically present before the judge unless all parties agree on the record.
(5) Witnesses, Victims, Other Persons. Witnesses, victims, and other persons may be located at any terminal site.	(5) Witnesses, Victims, Other Persons. Witnesses, victims, and other persons may be located at any terminal site.
Subd. 6. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by any judge of that district. Cases from other districts may be heard ~~upon authorization~~if authorized by the Chief Justice of the Supreme	Subd. 6. Multi-county Violations. When a defendant has pending charges in more than one county within a district, any or all ITV appearances authorized by this rule may be heard by any judge of that district. Cases from other districts may be heard if authorized by the Chief Justice of the Supreme Court.

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Court. Subd. 7. Proceedings; Record; Decorum. (1) Where Conducted. All ITV hearings ~~will~~must be conducted in a courtroom or other room at the courthouse reasonably accessible to the public. (2) Effect of ITV Hearing. Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing ~~shall have~~has the same effect as if done in person. (3) Defendant Right to Counsel. The court ~~shall~~must ensure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private. (4) Record. The court administrator of the venue county ~~shall~~must keep court minutes and maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter ~~shall~~must be in simultaneous voice communication with all ITV terminal sites, and ~~shall~~must make the appropriate verbatim record of the proceeding as if heard in person. No recording ~~shall be made~~ of ~~any~~the ITV proceeding other than ~~except~~ the recording made as the official court record is permitted. (5) Decorum. Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site. Subd. 8. Administrative Procedures. Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.	Subd. 7. Proceedings; Record; Decorum. (1) Where Conducted. All ITV hearings must be conducted in a courtroom or other room at the courthouse reasonably accessible to the public. (2) Effect of ITV Hearing. Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing has the same effect as if done in person. (3) Defendant Right to Counsel. The court must ensure that the defendant has adequate opportunity to speak privately with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private. (4) Record. The court administrator of the venue county must keep court minutes and maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter must be in simultaneous voice communication with all ITV terminal sites, and must make the appropriate verbatim record of the proceeding as if heard in person. No recording of the ITV proceeding other than the recording made as the official court record is permitted. (5) Decorum. Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more bailiffs at any ITV site. Subd. 8. Administrative Procedures. Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.

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Rule 1.06 Use of Electronic Filing for Charging Documents	**Rule 1.06 Use of Electronic Filing for Charging Documents**
Subd~~ivision~~. 1. Definitions.	Subd. 1. Definitions.
(1) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.	(1) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.
(2) E-filing. "E-filing" is the electronic transmission of the charging document to the court administrator.	(2) E-filing. "E-filing" is the electronic transmission of the charging document to the court administrator.
Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document except an indictment.	Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document except an indictment.
Subd. 3. Signatures.	Subd. 3. Signatures.
(1) How Made. All signatures required under these rules must be affixed electronically if the charging document is e-filed.	(1) How Made. All signatures required under these rules must be affixed electronically if the charging document is e-filed.
(2) Signature Standard. Each signature affixed electronically must comply with the electronic signature standard approved by the State Court Administrator, except that electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification.	(2) Signature Standard. Each signature affixed electronically must comply with the electronic signature standard approved by the State Court Administrator, except that electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification.
(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.	(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.
Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law.	Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law.
Subd. 5. Paper Submission. E-filed documents are in lieu of paper submissions. An e-filed document should not be transmitted to the	Subd. 5. Paper Submission. E-filed documents are in lieu of paper submissions. An e-filed document should not be transmitted to the

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court administrator by any other means unless the court requests a printed copy. Subd. 6. Scope and Effective Date. This is a temporary rule effective in the following counties for participants in the eCharging/e-filing pilot project: Carver, Kandiyohi, Olmsted, and St. Louis. The rule is effective December 1, 2008, and ~~shall be in effect~~ for two years ~~thereafter~~afterwards, unless earlier abrogated ~~earlier~~ by Supreme Court order ~~of this court~~. **Comment—Rule 1** ~~*By Rule 1.01, these rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the district courts in the State of Minnesota. Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.Rule 1.02 governing the general purpose and construction of the rules is taken from F.R.Crim.P. 2. In accord with the purpose of these rules to provide for a just and speedy determination of criminal proceedings, the rules specify time limits and consolidate court appearances and hearings whenever possible. Rule 11 provides for an Omnibus Hearing for the determination of all pre-trial issues. Under Rules 8.04, 11.04, and 11.07, that hearing must be commenced within 28 days after the appearance under Rule 8 and must be completed and all issues decided within 30 days after the appearance under Rule 8. Extensions of those time limits may be permitted by the trial court, but only for good cause related to the particular case. It would violate the purpose of these rules to bifurcate or further continue Omnibus Hearings on a general basis unrelated to the circumstances of a particular case.*~~ ~~*It is further the express purpose of these rules that they be applied without discrimination based upon the factors stated in Rule 1.02. The factors are the same as those set forth in Chapter 363 of*	court administrator by any other means unless the court requests a printed copy. Subd. 6. Scope and Effective Date. This is a temporary rule effective in the following counties for participants in the eCharging/e-filing pilot project: Carver, Kandiyohi, Olmsted, and St. Louis. The rule is effective December 1, 2008, and for two years afterwards, unless earlier abrogated by Supreme Court order. **Comment—Rule 1** *Beyond the procedures required by these rules, prosecutors, courts, and law enforcement agencies should also be aware of the rights of crime victims as provided in chapter 611A of the Minnesota Statutes.* *Rule 1.04 (d) defines "aggravated sentence" for the purpose of the provisions in these rules governing the procedure that a sentencing court must follow to impose an upward sentencing departure in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 (2004). On June 24, 2004, the United States Supreme Court decided in Blakely that an upward departure in sentencing under the State of Washington's determinate sentencing system violated the defendant's Sixth Amendment rights where the additional findings required to justify the departure were not made beyond a reasonable doubt by a jury. The definition is in accord with existing Minnesota case law holding that Blakely applies to upward departures under the Minnesota Sentencing Guidelines and under various sentencing enhancement statutes requiring additional factual findings. See, e.g., State v. Shattuck, 704 N.W.2d 131, 140-142 (Minn. 2005) (durational departures); State v. Allen, 706 N.W.2d 40, 44-47 (Minn. 2005) (dispositional departures); State v. Leake, 699 N.W.2d 312, 321-324 (Minn. 2005) (life sentence without release under Minnesota Statutes, section 609.106); State v. Barker, 705 N.W.2d 768, 771-773 (Minn. 2005) (firearm sentence enhancements under Minnesota Statutes, section 609.11); and State v. Henderson,*

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~~*the Minnesota Statutes forbidding discriminatory practices in employment and certain other situations except that those handicapped in communication are added to the list of those protected against discrimination. Minn. Stat. §§ 611.31-611.34 (1992). The Minnesota Supreme Court Task Forces on Gender Fairness and Racial Bias have studied and documented gender and racial bias in the legal system. Their reports issued June 30, 1989 and May, 1993 respectively contain recommendations to address these problems. See 15 Wm. Mitchell L.Rev. 827 (1989) (gender fairness report) and 16 Hamline L.Rev. 477 (1993) (racial bias report). Any recommendations in those reports concerning the Rules of Criminal Procedure have been reviewed carefully and appropriate revisions have been made in these rules.*~~ *Beyond the procedures required by these rules, prosecutors, courts, and law enforcement agencies should also be aware of the rights of crime victims as provided in chapter 611A of the Minnesota Statutes.* ~~*This would include, but is not limited to, the prosecutor's duty to provide notice of a prospective plea agreement (Minn. Stat. § 611A.03); referral to a pretrial diversion program (Minn. Stat. § 611A.031); dismissal of domestic assault or harassment proceedings (Minn. Stat. § 611A.0315); the final disposition of the case (Minn. Stat. § 611A.039); and the pendency of an appeal of the proceedings (Minn. Stat. § 611.0395). Also see Minn. Stat. § 629.72, subd. 7 and Minn. Stat. § 629.725 as to the duty of the court to provide notice of any hearing on release of the defendant from pretrial detention in domestic abuse, harassment or crimes of violence cases, and Minn. Stat. § 629.73 as to the duty of the agency having custody of the defendant in such cases to provide notice of the defendant's impending release.*~~ ~~*Rule 1.03 is identical to Rule 83 of the Minnesota Rules of Civil Procedure and is intended to assure uniformity in local rules. The General Rules of Practice for the District Court were adopted by the Supreme Court effective January 1, 1992 to consolidate and make uniform*~~	*706 N.W.2d 758, 761-762 (Minn. 2005) (career offender sentence enhancements under Minnesota Statutes section 609.1095, subd. 4).* *These Blakely-related protections and procedures do not apply retroactively to sentences that were imposed and were no longer subject to direct appeal by the time that Blakely was decided on June 24, 2004. State v. Houston, 702 N.W.2d 268, 773 (Minn. 2005). Also, the protections and procedures do not apply to sentencing departures and enhancements that are based solely on a defendant's criminal conviction history such as the assessment of a custody status point under the Minnesota Sentencing Guidelines. State v. Allen, 706 N.W.2d 40, 47-48 (Minn. 2005).* *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 to support an aggravated sentence and accompanying waiver of rights); Rules 26.03, subd. 17(1) and (3) (motion that evidence submitted to jury was insufficient to support an aggravated sentence); Rule 26.03, subd. 18(7) (verdict forms); Rule 26.03, subd. 19(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*

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~~*the local rules of practice throughout the state. Only a few of the previously existing local rules were preserved as special rules for particular judicial districts. No local rule is permitted which would conflict with these Rules of Criminal Procedure and to be effective any new local rule must first be approved by the Supreme Court.*~~ ~~*Rule 1.04(a) clarifies that any duties, functions or responsibilities set forth in the rules for clerks or deputy clerks also apply to court administrators and deputy court administrators. This is in accord with Minn. Stat. § 485.01 (1997). Under Rule 4.02, subd. 5(3) it is possible to commence a prosecution by tab charge for certain designated gross misdemeanors. See Rule 4.02, subd. 5(3) and the comments to that rule for the limitations on such prosecutions. That term is also used in various other places throughout the rules and Rule 1.04(b) specifies the offenses which are considered to be "designated gross misdemeanors". Minnesota Statutes § 169A. relates to driving, operating, or physical control of a motor vehicle while under the influence of alcohol or a controlled or hazardous substance or refusing to submit to a chemical test and Minn. Stat. § 171.24 (1997) relates to driving after cancellation. Minnesota Statutes § 169A.25 (second degree driving while impaired), and Minn. Stat. § 169A.26 (third degree driving while impaired) establish the circumstances under which violations of Minn. Stat. § 169A.20 constitute a gross misdemeanor.*~~ *Rule 1.04 (d) defines "aggravated sentence" for the purpose of the provisions in these rules governing the procedure that a sentencing court must follow to impose an upward sentencing departure in compliance with Blakely v. Washington, 542 U.S. 296, 301-305, ~~124 S.Ct. 2531~~ (2004). On June 24, 2004, the United States Supreme Court decided in Blakely that an upward departure in sentencing under the State of Washington's determinate sentencing system violated the defendant's Sixth Amendment rights where the additional findings required to justify the departure were not made beyond a reasonable doubt by a jury. The definition is in accord with existing Minnesota case law holding that Blakely*	*other statutes.* *The signatures of the following persons must be affixed electronically when a complaint is e-filed pursuant to Rule 1.06:* *(a) the complainant, as required under Rule 2.01, subd. 1;* *(b) the judge, court administrator, or notary public before whom a complaint is made upon oath, as required under Rule 2.01, subd. 2;* *(c) the prosecutor, as required under Rule 2.02; and* *(d) the judge, indicating a written finding of probable cause, as required under Rule 4.03, subd. 4. There are currently no signature requirements in the rules for citations or tab charges.* *It is anticipated that if a complaint is commenced electronically, any actor in the chain (e.g., prosecutor or judge) could choose to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint are valid so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2).* *Electronic Notarization, as required under Rule 1.06, subd. 4, is governed by Minnesota Statutes, chapters 358 and 359.*

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applies to upward departures under the Minnesota Sentencing Guidelines and under various sentencing enhancement statutes requiring additional factual findings. See, e.g., State v. Shattuck, 704 N.W.2d 131, 140-142 (Minn. 2005) (durational departures); State v. Allen, 706 N.W.2d 40, 44-47 (Minn. 2005) (dispositional departures); State v. Leake, 699 N.W.2d 312, 321-324 (Minn. 2005) (life sentence without release under Minnesota Statutes, section 609.106); State v. Barker, 705 N.W.2d 768, 771-773 (Minn. 2005) (firearm sentence enhancements under Minnesota Statutes, section 609.11); and State v. Henderson, 706 N.W.2d 758, 761-762 (Minn. 2005) (career offender sentence enhancements under Minnesota Statutes section 609.1095, subd. 4). *~~However, t~~These Blakely-related protections and procedures do not apply retroactively to sentences that were imposed and were no longer subject to direct appeal by the time that Blakely was decided on June 24, 2004. State v. Houston, 702 N.W.2d 268,773 (Minn. 2005). Also, the protections and procedures do not apply to sentencing departures and enhancements that are based solely on a defendant's criminal conviction history such as the assessment of a custody status point under the Minnesota Sentencing Guidelines. State v. Allen, 706 N.W.2d 40, 47-48 (Minn. 2005).* *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~~(3)~~ (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*	

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to support an aggravated sentence and accompanying waiver of rights); Rules 26.03, subd. 17(1) and (3) (motion that evidence submitted to jury was insufficient to support an aggravated sentence); Rule 26.03, subd. 18(76) (verdict forms); Rule 26.03, subd. 19(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. *The signatures of the following persons must be affixed electronically when a complaint is e-filed pursuant to Rule 1.06:* *(a) the complainant, as required under Rule 2.01, subd. 1;* *(b) the judge, court administrator, or notary public before whom a complaint is made upon oath, as required under Rule 2.01, subd. 2;* *(c) the prosecutor, as required under Rule 2.02; and* *(d) the judge, indicating a written finding of probable cause, as required under Rule 4.03, subd. 4. There are currently no signature requirements in the rules for citations or tab charges.* *It is anticipated that if a complaint is commenced electronically, any actor in the chain (e.g., prosecutor or judge) could choose to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint are valid so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2).* *Electronic Notarization, as required under Rule 1.06, subd. 4, is governed by ~~Minn. Stat. Chs.~~Minnesota Statutes, chapters 358 and 359.*	

Proposed Revisions to Minn. R. Crim. P. 2

Original Language Showing Markup	Proposed Revised Language
Rule 2. Complaint **Rule 2.01 Contents; Before Whom Made**	**Rule 2. Complaint** **Rule 2.01 Contents; Before Whom Made**
Subd. 1. Contents. The complaint is a written signed statement of the ~~essential facts constituting the offense charged. Except as provided in Rules 6.01, subd. 3, 11.06, and 15.08, the~~ facts establishing probable cause to believe that ~~an~~the charged offense has been committed and that the defendant committed it, as modified by Rules 6.01, subd. 4, 11.08, and 15.08. ~~must be set forth in writing in the complaint, and~~ The probable cause statement ~~may~~ can be supplemented by supporting affidavits or by sworn witness testimony ~~of witnesses~~ taken ~~before~~by the issuing judge~~ or judicial officer~~. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must ~~otherwise~~also conform to the requirements ~~of~~in Rule 17.02.	Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, as modified by Rules 6.01, subd. 4, 11.08, and 15.08. The probable cause statement can be supplemented by supporting affidavits or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.
Subd. 2. Before Whom Made. ~~Except as provided in Rules 11.06 and 15.08, the~~The probable cause statement ~~complaint~~ must be made ~~upon~~under oath before a judge~~ or judicial officer of the district court~~, court administrator, or notary public, unless otherwise provided in Rules 11.08 and 15.08. If oral testimony is taken under subdivision 3, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device.	Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, unless otherwise provided in Rules 11.08 and 15.08. If oral testimony is taken under subdivision 3, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device.
Subd. 3. How Made. If the court takes sworn testimony~~ is taken~~, it must ~~a~~ note ~~so stating must be made on the face of~~that fact on the complaint ~~by the issuing officer~~. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed. ~~Any complaint, supporting affidavits, or supplementary sworn testimony made or taken upon oath before the issuing judge or judicial officer pursuant to this rule may be made or taken by telephone, facsimile transmission, video~~	Subd. 3. How Made. If the court takes sworn testimony, it must note that fact on the complaint. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed.

~~equipment, or similar device at the discretion of such judge or judicial officer.~~	
Subd. 4. Probable Cause Determination. ~~Upon the information presented, the~~The judge ~~or judicial officer~~ must determine whether ~~there is~~ probable cause exists to believe ~~that~~ an offense has been committed and ~~that~~ the defendant committed it. When the alleged offense ~~alleged to have been committed~~ is punishable by a fine only, the probable cause determination ~~of probable cause may~~ can be made by the court administrator if authorized by court order.	Subd. 4. Probable Cause Determination. The judge must determine whether probable cause exists to believe an offense has been committed and the defendant committed it. When the alleged offense is punishable by a fine only, the probable cause determination can be made by the court administrator if authorized by court order.
Rule 2.02 Approval of ~~Prosecuting Attorney~~Prosecutor	**Rule 2.02 Approval of Prosecutor**
A complaint ~~shall~~must not be ~~filed or process~~ issued ~~thereon~~ without the ~~written approval, endorsed on the complaint, of the prosecuting attorney~~prosecutor's signature, ~~authorized to prosecute the offense charged,~~ unless ~~such~~a judge ~~or judicial officer as may be authorized by law to issue process upon the offense~~ certifies on the complaint that the ~~prosecuting attorney~~prosecutor is unavailable and that ~~the filing~~issuance of the complaint ~~and issuance of process thereon~~ should not be delayed.	A complaint must not be issued without the prosecutor's signature, unless a judge certifies on the complaint that the prosecutor is unavailable and that issuance of the complaint should not be delayed.
Comment—Rule 2	**Comment—Rule 2**
~~*Under these rules (See Rules 10.01, 8.01, 17.01), the complaint, tab charge and indictment are the only accusatory pleadings by which a prosecution may be initiated and upon which it may be based. The complaint will take the place of the information under existing practice (Minn. Stat. §§ 628.29-628.33 (1971)).*~~	*Rule 2.01 notes exceptions to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation. Rules 11.08 and 15.08, which authorize the substitution of a new complaint to permit a plea to a misdemeanor or different offense, do not require a showing of probable cause.*
~~*By Rule 2.01, the complaint must consist of a written signed statement of the essential facts constituting the offense charged. This language is taken from F.R.Crim.P. 3. The complaint must otherwise conform to the provisions of Rule 17.02.*~~	*Even if affidavits, testimony, or other reports supplement the complaint, the complaint must still include a statement of the facts establishing probable cause. Under this rule, the complaint and any supporting affidavits can be sworn to before a court administrator or notary public. The documents can then be submitted to the judge or judicial officer by any method permitted under the rule and the law enforcement officer or other*
~~*Except as provided in Rules 11.06 and 15.08 authorizing the substitution of a new complaint to permit a plea to a misdemeanor or different offense, the complaint shall be sworn to before any*~~	

~~*judge or judicial officer of a district court, clerk or deputy clerk of court, or a notary public.*~~ ~~*Where the alleged offense is punishable only by a fine, as for a petty misdemeanor, the determination of probable cause may be made by a clerk or deputy clerk of court if court order authorizes this procedure. The clerk or deputy clerk could also issue a summons in such a case under Rule 3.01, but is not permitted to issue a warrant. Except for this requirement of authorization by court order in Rule 2.01, this provision is consistent with previous Minnesota law under Minn. Stat. §§ 629.42 (1971); 487.25, subd. 3 (1973) (governing county courts); 488A.10, subd. 3 (1971) (governing Hennepin County Municipal Court); 488A.27, subd. 3 (1971) (governing St. Paul Municipal Court); and 488.17, subd. 3 (1971) (governing all other municipal courts). This power may be constitutionally exercised by a detached and neutral clerk or deputy clerk under Shadwick v. City of Tampa, 407 U.S. 345 (1972). See Rule 3.01 as to the issuance of a summons by a clerk or deputy clerk of court.*~~ ~~*Except as provided in Rules 6.01, subd. 3, 11.06 and 15.08, the probable cause statement shall be set forth separately in the complaint, and the complaint may be supplemented by supporting affidavits or sworn recorded testimony.*~~ *Rule 2.01 notes exceptions to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation. Rules 11.08 and 15.08, which authorize the substitution of a new complaint to permit a plea to a misdemeanor or different offense, do not require a showing of probable cause.* *Even if*~~*If*~~ *affidavits, testimony, or other reports* ~~*are used to*~~ *supplement the complaint,* ~~*it is still necessary to include in*~~ *the complaint must still include a statement of the facts establishing probable cause. Under this rule*~~*, it is permissible, for*~~ *the complaint and any supporting affidavits* ~~*to*~~ *can be sworn to before a* ~~*clerk, deputy clerk*~~*court administrator or notary public. The documents* ~~*may*~~ *can then be submitted to the judge or judicial officer by any* ~~*of the methods*~~ *method permitted under the rule and the law enforcement officer or complainant need not personally appear before the judge. However, if sworn oral testimony is taken to supplement the complaint, it must be taken before the judge and cannot be taken before a court administrator or notary public.* *Rule 3.01 does not define probable cause for the purpose of obtaining a warrant of arrest or to prescribe the evidence that may be considered on that issue. These issues are determined by federal Fourth Amendment constitutional law. See e.g., State ex rel. Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (1966); State v. Burch, 284 Minn. 300, 170 N.W.2d 543 (1969).* *The prosecutors referred to in Rule 2.02 are those authorized by law to prosecute the offense charged. See Minn. Stat. § 484.87 (allocating prosecutorial responsibilities amongst city, township, and county prosecutors); Minn. Stat. §§ 8.01and 8.03 (Attorney General); Minn. Stat. § 388.051 (County Attorney).* *Rule 2.02 does not define the remedy available when a local prosecutor refuses to approve a complaint.* *Because the documents supporting the statement of probable cause can contain irrelevant material that is injurious to innocent third persons, and material prejudicial to the defendant's right to a fair trial, it is recommended that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material be omitted.*

other complainant need not personally appear before the ~~issuing~~ judge ~~or judicial officer~~. However, if sworn oral testimony is taken to supplement the complaint, it must be taken before the judge ~~or judicial officer~~ and cannot be taken before a ~~clerk, deputy clerk~~court administrator or notary public. ~~If supplemental testimony is taken a note so stating shall be made on the face of the complaint so that an interested party or attorney examining the complaint will have notice that such testimony was taken.~~

~~Rule 2.01 permits the judge or judicial officer to review the complaint and any supporting affidavits or supplementary testimony and to administer the oath by telephone, video equipment, or similar electronic device. Any supplementary testimony so taken shall be recorded, transcribed and filed. If the complaint is issued and a warrant is also necessary, they may be transmitted by facsimile transmission as permitted by Rule 33.05. By this method, much time, travel and expense can be saved in those counties where a judge is not readily available to the complainant.~~

~~References in the rules to clerks of court for the trial courts include court administrators. See Minn. Stat. § 485.01 (1988) authorizing court administrators to perform any duties, functions and responsibilities required of clerks of court.~~

~~Rules 11.06 and 15.08 authorizing the substitution of a new complaint to permit a plea to a misdemeanor or different offense do not require a showing of probable cause.~~ Rule 3.01 does not ~~attempt to~~ define probable cause for the purpose of obtaining a warrant of arrest or to prescribe the evidence that may be considered ~~up~~on that issue. These issues are ~~That is~~ determined by federal Fourth Amendment constitutional law ~~under the Fourth Amendment~~. ~~(~~See e.g., State ex rel. Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (~~1967~~1966); ~~-~~State v. Burch, 284 Minn. 300, 170 N.W.2d 543 (1969).

~~Rule 2.02 requires the prosecuting attorney's written approval of the filing of a complaint. This is in accord with ABA Standards, Prosecution Function 3.4 (Approved Draft, 1968) that the decision to institute criminal proceedings shall be initially and primarily the responsibility of the~~

~~*prosecutor. Similar provisions are contained in ALI Model Code of Pre-Arraignment Procedures, § 6.02 (T.D. § 1, 1966) and Wis. Stat. § 968.02(1), (3).*~~ *The ~~prosecuting attorneys~~prosecutors referred to in Rule 2.02 are those authorized by law to prosecute the offense charged. ~~(~~See Minn. Stat. § ~~487.25, subd. 10 (1971) (county courts); Minn. Stat. §§ 488A.10, subd. 11, 488A.101 (1971) (Municipal Court of Hennepin County); Minn. Stat. § 488A.27, subd. 11 (1971) (Municipal Court of St. Paul); Minn. Stat. § 488A.41 (1971) (Municipal Court of Duluth); Minn. Stat. § 488.17, subd. 9 (1971) (Municipal Courts in Ramsey and St. Louis Counties)~~484.87 (allocating prosecutorial responsibilities amongst city, township, and county prosecutors); Minn. Stat. §§ 8.01~~,~~and 8.03 ~~(1971)~~ (Attorney General); Minn. Stat. § 388.051 ~~(1971)~~ (County Attorney).~~)~~* ~~*If the prosecuting attorney is unavailable and it is necessary that the complaint be filed at once, the judge authorized to issue process on the complaint or the judicial officer with that power may permit the complaint to be filed and upon a finding of probable cause, issue process thereon.*~~ *Rule 2.02 does not define the remedy available ~~leaves to other laws the question of the available remedy~~ when a local prosecutor refuses to approve a complaint.* *Because the documents supporting the statement of probable cause ~~may~~ can contain irrelevant material~~, material~~ that is injurious to innocent third persons, and material prejudicial to the defendant's right to a fair trial, it is ~~the~~ recommended ~~practice~~ that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material~~, material injurious to innocent third persons and material prejudicial to defendant's right to a fair trial~~ be omitted ~~therefrom~~.*	

Proposed Revisions to Minn. R. Crim. P. 3

Original Language Showing Markup	Proposed Revised Language
Rule 3. Warrant or Summons upon Complaint	**Rule 3. Warrant or Summons upon Complaint**
Rule 3.01 Issuance	**Rule 3.01 Issuance**
If ~~it appears from~~ the facts ~~set forth in writing~~ in the complaint and any supporting affidavits or supplemental sworn testimony ~~that there is~~ establish probable cause to believe ~~that~~ an offense has been committed and ~~that~~ the defendant committed it, a summons or warrant ~~shall~~ must ~~be~~ issue~~d~~. A summons ~~shall be issued~~ rather than a warrant must issue unless ~~it reasonably appears that there is~~ a substantial likelihood exists that the defendant will fail to respond to a summons, ~~or~~ the defendant's ~~whereabouts~~location is not reasonably discoverable, or the defendant's arrest ~~of the defendant~~ is necessary to prevent imminent harm to anyone~~the defendant or another~~. ~~If issued, a~~ A warrant for the defendant's arrest ~~of the defendant shall~~ must be issued to any person authorized by law to execute it.	If the facts in the complaint and any supporting affidavits or supplemental sworn testimony establish probable cause to believe an offense has been committed and the defendant committed it, a summons or warrant must issue. A summons rather than a warrant must issue unless a substantial likelihood exists that the defendant will fail to respond to a summons, the defendant's location is not reasonably discoverable, or the defendant's arrest is necessary to prevent imminent harm to anyone. A warrant for the defendant's arrest must be issued to any person authorized by law to execute it.
The warrant or summons ~~shall~~ must be issued by a judge ~~or judicial officer~~ of the district court. ~~Provided that when~~ If the offense is punishable by fine only, ~~the clerk or~~ a court administrator ~~deputy clerk of court~~ may ~~also~~ issue the summons when authorized by court order.	The warrant or summons must be issued by a judge of the district court. If the offense is punishable by fine only, a court administrator may issue the summons when authorized by court order.
~~When the offense is punishable by fine only, in misdemeanor cases, a~~ A summons ~~shall~~ must ~~be~~ issue~~d~~ in lieu of a warrant~~.~~ if the offense is punishable by fine only in misdemeanor cases.	A summons must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.
~~The~~A judge~~issuing officer~~ ~~shall~~ must issue a summons whenever requested to do so by the ~~prosecuting attorney authorized to prosecute the offense charged in the complaint~~ prosecutor.	A judge must issue a summons whenever requested to do so by the prosecutor.
If a defendant fails to appear in response to a summons, a warrant ~~shall~~ must issue.	If a defendant fails to appear in response to a summons, a warrant must issue.
Rule 3.02 Contents of Warrant or Summons	**Rule 3.02 Contents of Warrant or Summons**
Subd. 1. Warrant. The warrant ~~shall~~ must be signed by ~~the~~a judge~~issuing officer~~ and ~~shall~~	**Subd. 1. Warrant.** The warrant must be signed by a judge and must contain the name of

must contain the name of the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It ~~shall~~ must describe the offense charged in the complaint~~.~~. ~~and the~~The warrant and complaint may be combined in one form. For all offenses, the amount of bail ~~shall~~ must be set, and other conditions of release may be set, by ~~the~~a ~~issuing officer~~ judge and endorsed on the warrant.

Subd. 2. Directions of Warrant. The warrant ~~shall~~ must direct that the defendant be brought promptly before the court that issued the warrant if ~~it~~the court is in session.

If the court specified is not in session, the warrant ~~shall~~must direct that the defendant be brought before ~~a judge or judicial officer of such~~the court~~,~~ without unnecessary delay, and ~~in any event~~ not later than 36 hours after the arrest, exclusive of the day of arrest, or as soon ~~thereafter~~ as ~~such~~ a judge ~~or judicial officer~~ is available.

Subd. 3. Summons. The summons ~~shall~~ must summon the defendant to appear at a stated time and place to answer the complaint before the court issuing it, and ~~shall~~ must be accompanied by a copy of the complaint.

Rule 3.03 Execution or Service of Warrant or Summons; Certification

Subd. 1. By Whom. The warrant ~~shall~~ must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail, it may also be served by the ~~clerk of the court~~ court administrator~~from which it is issued~~.

Subd. 2. Territorial Limits. The warrant may be executed or the summons may be served at any place within the State, except where prohibited by law.

Subd. 3. Manner. ~~The~~ A warrant ~~shall~~is ~~be~~ executed by the defendant's arrest~~ of the defendant~~. If the offense charged is a misdemeanor, the defendant ~~shall~~ must not be

the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It must describe the offense charged in the complaint. The warrant and complaint may be combined in one form. For all offenses, the amount of bail must be set, and other conditions of release may be set, by a judge and endorsed on the warrant.

Subd. 2. Directions of Warrant. The warrant must direct that the defendant be brought promptly before the court that issued the warrant if the court is in session.

If the court specified is not in session, the warrant must direct that the defendant be brought before the court without unnecessary delay, and not later than 36 hours after the arrest, exclusive of the day of arrest, or as soon as a judge is available.

Subd. 3. Summons. The summons must summon the defendant to appear at a stated time and place to answer the complaint before the court issuing it, and must be accompanied by a copy of the complaint.

Rule 3.03 Execution or Service of Warrant or Summons; Certification

Subd. 1. By Whom. The warrant must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail, it may also be served by the court administrator.

Subd. 2. Territorial Limits. The warrant may be executed or the summons may be served at any place within the State, except where prohibited by law.

Subd. 3. Manner. A warrant is executed by the defendant's arrest. If the offense charged is a misdemeanor, the defendant must not be arrested on Sunday or, on any other day of the week,

arrested on Sunday or, on any other day of the week, between the hours of 10:00 ~~o'clock~~ p.m. and 8:00 ~~o'clock~~ a.m. ~~on any other day~~ except, when exigent circumstances exist, by direction of the judge~~issuing officer~~, ~~endorsed~~stated on the warrant~~ when exigent circumstances exist.~~ ~~or when the person named in the warrant~~ A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession ~~at the time of~~when the arrest occurs, but ~~shall~~ must inform the defendant of the warrant's existence ~~of the warrant~~ and of the charge.	between the hours of 10:00 p.m. and 8:00 a.m. except, when exigent circumstances exist, by direction of the judge, stated on the warrant. A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession when the arrest occurs, but must inform the defendant of the warrant's existence and of the charge.
The summons ~~shall~~ must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's ~~dwelling house or~~ usual place of abode with ~~some~~ a person of suitable age and discretion ~~then~~ residing there~~in~~, or by mailing it to the defendant's last known address. A summons directed to a ~~corporation shall~~ corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.	The summons must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of abode with a person of suitable age and discretion residing there, or by mailing it to the defendant's last known address. A summons directed to a corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.
Subd. 4. Certification; Unexecuted Warrant or Summons. The officer executing the warrant ~~shall~~ must certify the execution ~~thereof~~ to the court before which the defendant is brought.	**Subd. 4. Certification; Unexecuted Warrant or Summons.** The officer executing the warrant must certify the execution to the court before which the defendant is brought.
On or before the date set for appearance, the officer or clerk of court to whom a summons was delivered for service ~~shall~~ must certify ~~the~~ its service ~~thereof~~ to the court before which the defendant was summoned to appear.	On or before the date set for appearance, the officer or clerk of court to whom a summons was delivered for service must certify its service to the court before which the defendant was summoned to appear.
At the prosecutor's request ~~of the prosecuting attorney made at any time while the complaint is pending~~, an unexecuted warrant, ~~returned unexecuted or~~ an unserved summons, ~~returned unserved~~ or a duplicate ~~thereof~~ may be delivered by ~~the issuing officer~~ a judge to any authorized officer or person for execution or service.	At the prosecutor's request, an unexecuted warrant, an unserved summons, or a duplicate may be delivered by a judge to any authorized officer or person for execution or service.

Rule 3.04 Defective Warrant, Summons or Complaint

Subd. 1. Amendment. A person arrested under a warrant or appearing in response to a summons ~~shall~~ must not be discharged from custody or dismissed because of any defect in form in the warrant or summons~~,~~ if the warrant or summons is amended ~~so as~~ to remedy the defect.

Subd. 2. Issuance of New Complaint, Warrant or Summons. ~~During p~~Pre-trial proceedings ~~affecting any person arrested under a warrant or appearing in response to a summons issued upon a complaint, the proceedings~~ may be continued to permit a new complaint to be filed and a new warrant or summons issued ~~thereon, provided the~~ if the prosecutor ~~prosecuting attorney~~ promptly moves for ~~such~~a continuance on the ground that:

(a) ~~that~~ the initial complaint does not properly name or describe the defendant or the offense charged; or

(b) ~~that on the basis of~~ the evidence presented ~~at the proceeding it appears that there is~~ establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and ~~that~~ the prosecutor~~prosecuting attorney~~ intends to charge the defendant with ~~such~~ that offense.

If the proceedings are continued, the new complaint ~~shall~~ must be filed and process promptly issued ~~thereon as soon as possible~~. In misdemeanor cases, if the defendant during the continuance is unable to post ~~any~~ bail ~~which~~ that might be required under Rule 6.02, subd. 1, then the defendant must be released subject to such non-monetary conditions as the court deem~~ed~~s necessary ~~by the court~~ under that Rule.

Comment—Rule 3

~~*When probable cause in accordance with Rule 2.01 appears from the evidence set forth in the complaint and any supporting affidavits or supplemental testimony, Rule 3.01 authorizes the issuance of a warrant or summons. This rule is similar to F.R.Crim.P. 4 and in authorizing issuance of a summons follows ABA Standards,*~~

Rule 3.04 Defective Warrant, Summons or Complaint

Subd. 1. Amendment. A person arrested under a warrant or appearing in response to a summons must not be discharged from custody or dismissed because of any defect in form in the warrant or summons if the warrant or summons is amended to remedy the defect.

Subd. 2. Issuance of New Complaint, Warrant or Summons. Pre-trial proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued if the prosecutor promptly moves for a continuance on the ground that:

(a) the initial complaint does not properly name or describe the defendant or the offense charged; or

(b) the evidence presented establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and the prosecutor intends to charge the defendant with that offense.

If the proceedings are continued, the new complaint must be filed and process promptly issued. In misdemeanor cases, if the defendant during the continuance is unable to post bail that might be required under Rule 6.02, subd. 1, then the defendant must be released subject to such non-monetary conditions as the court deems necessary under that Rule.

Comment—Rule 3

See Rule 4.02, subd. 5(3) for restrictions on the issuance of a warrant for an offense for which the prosecution has obtained a valid complaint after the time in which the court had ordered the complaint to be prepared.

Issuance of a warrant instead of a summons

~~*Pre-Trial Release 3.1 (Approved Draft, 1979) and ALI Model Code of Pre-Arraignment Procedures § 6.04(1) (T.D. § 1, 1966). Except in the case of a corporate defendant (Minn. Stat. § 630.15 (1971)), Minnesota statutory law had no provision for issuance of a summons in lieu of a warrant.*~~

~~*In all cases, the issuing officer must issue a summons instead of a warrant unless there is a substantial likelihood that the accused will not respond to a summons, or the defendant's whereabouts is not reasonably discoverable, or the arrest of the defendant is necessary to prevent harm to the defendant or another. This test is consistent with that in Rule 6 governing the mandatory issuance of citations in lieu of making an arrest and is based on ABA Standards, Pre-Trial Release 3.2 (Approved Draft, 1979). Under this test, simply not knowing the defendant's address without some further effort to locate the defendant is not sufficient to justify issuance of a warrant. This requirement is imposed to lessen the danger that warrants will be disproportionately issued against economically disadvantaged persons simply because they do not currently have a permanent residence or their address is more difficult to determine. The revision of this standard is in accord with the recommendation of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System in its Final Report of May, 1993, that the criteria for issuance of a summons or citation be examined to ensure that they are race neutral.*~~

~~*A summons must be issued instead of a warrant when the defendant is charged with a misdemeanor offense punishable by fine only. This stringent restriction on the issuance of warrants is considered justified to prevent the incarceration, even temporarily, of a defendant pending arraignment on a charge which the state or other governmental unit has decided does not even merit incarceration upon conviction. If the defendant fails to respond to the summons, a warrant may be issued.*~~

~~*Additionally, a summons shall be issued if the prosecuting attorney requests it.*~~

See ~~*also*~~ *Rule 4.02, subd. 5(3) for restrictions on the issuance of a warrant for an offense for which a petty misdemeanor is the only penalty. These restrictions should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings. In overcoming the presumption for issuing a summons rather than a warrant, the prosecutor may, among other factors, cite to the nature and circumstances of the particular case, the past history of response to legal process and the defendant's criminal record. The remedy of a defendant who has been arrested by warrant is to request the imposition of conditions of release under Rule 6.02, subd. 1 upon the initial court appearance.*

Minnesota law requires that the defendant be taken before the court "without unreasonable delay." See e.g., Stromberg v. Hansen, 177 Minn. 307, 225 N.W. 148 (1929). See also Minn. Stat. § 629.401. Rule 3.02, subd. 2 imposes more definite time limitations while permitting a degree of flexibility. The first limitation (Rule 3.02, subd. 2) is that the defendant must be brought directly before the court if it is in session. The second limitation (Rule 3.02, subd. 2) is that if the court is not in session, the defendant must be taken before the nearest available judge of the issuing court without unnecessary delay, but not more than 36 hours after the arrest or as soon after the 36-hour period as a judge of the issuing court is available.

In computing the 36-hour time limit in Rule 3.02, subd. 2, the day of arrest is not counted. The 36 hours begin to run at midnight following the arrest. Also, Rule 34.01 expressly does not apply to Rule 3.02, subd. 2. Saturdays are to be counted in computing the 36-hour time limit under this rule. (See also Rule 4.02, subd. 5).

The provisions of Rule 3.03, subd. 2 that a warrant may be executed or a summons served at any place within the State is in accord with existing law governing service of criminal process. The phrase "except where prohibited by law" was added to exclude those places, such as federal reservations, where state service of process may be prohibited by law.

For service of summons on corporations, Rule 3.03, subd. 3 adopts the method prescribed by law for service of process in civil actions. See

which the prosecution has obtained a valid complaint after the time in which the court had ordered the complaint to be prepared. *Issuance of a warrant instead of a summons should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings. In overcoming the presumption for issuing a summons rather than a warrant, the prosecutor~~prosecuting attorney~~ may, among other factors, cite to the nature and circumstances of the particular case, the past history of response to legal process and the defendant's criminal record. The remedy of a defendant who has been arrested by warrant is to request the imposition of conditions of release under Rule 6.02, subd. 1 upon the initial court appearance.* ~~*By Rule 3.01 the warrant shall be issued to any person authorized by law to execute a warrant. (See Rule 3.03, subd. 1 for service of a summons by any officer authorized by law to execute a warrant.) (For authorized persons and officers, see Minn.Stat. § 488.11 (1971) (municipal courts not in county court districts); Minn.Stat. §§ 487.25, 633.035 (1971) (county courts and justices of the peace); Minn.Stat. § 488A.06 (1971) (Municipal Court of Hennepin County); Minn.Stat. § 488A.27, subd. 12 (1971) (Municipal Court of St. Paul); Minn.Stat. § 629.30 (1971) (peace officers); Minn.Stat. § 411.27 (1971) (cities of the fourth class); Minn.Stat. §§ 412.61, 412.861 (villages).)*~~ ~~*The provision of Rule 3.01 that if an individual defendant fails to appear in response to a summons, a warrant shall issue follows F.R.Crim.P. 4(a).*~~ ~~*Rule 3.02, subd. 1 prescribing the contents of a warrant follows the language of F.R.Crim.P. 4(b)(1), with the added provision that the warrant and complaint may be combined in one form. This is the present practice in the Municipal Court of Hennepin County. (See also Wis.Stat.§ 968.04, subd. 3(a)(8)). This rule also provides that conditions of release may be endorsed on the warrant. If so endorsed, the defendant should be released on meeting those conditions. In all cases, the issuing officer must set and endorse on*~~	*Minn.R.Civ.P. 4.03(c).*

~~*the warrant the amount of bail which the defendant may pay to obtain release. Upon payment to the jailer of the bail so set, the defendant should be released pending court appearance. The officers authorized to issue warrants or summons are the same as those authorized to issue complaints. See Rule 2.01 and the comments thereon as to those officers so authorized. Clerks or deputy clerks of court are authorized to issue a summons only for offenses which are punishable, upon conviction, by a fine. This is constitutionally permissible under Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119 (1972) and is presently authorized under Minn.Stat. § 629.42 (1971); Minn.Stat. § 488.17, subd. 6 (1971) (Municipal Courts outside of Hennepin County and St. Paul which are not part of the County Court system); Minn.Stat. § 488A.10, subd. 7 (1971) (Hennepin County Municipal Court); and 488A.27, subd. 7 (1971) (St. Paul Municipal Court). The clerk or deputy clerk, however, may not issue warrants for any offense.*~~

~~*The words "issuing officer" in Rules 3.01 and 3.02, subd. 1, refer to the judge or judicial officer who issues process upon the complaint and does not refer to the arresting officer. Rule 3.02, subd. 2 sets forth the directions the warrant shall contain for the time of the defendant's first court appearance after arrest.*~~

~~*Present*~~ *Minnesota law requires that the defendant be taken before the court "without unreasonable delay"* ~~*(*~~*See e.g., Stromberg v. Hansen, 177 Minn. 307, 225 N.W. 148 (1929)*~~;~~. *See also Minn. Stat. §*~~§ 629.42,~~ *629.401* ~~*(1971).)*~~ ~~*F.R.Crim.P. 5(a) contains a similar provision.*~~

~~—~~*Rule 3.02, subd. 2 imposes more definite time limitations while permitting a degree of flexibility.*

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

~~Ordinarily~~ the defendant ~~shall~~ must be brought directly before the court if it is in session.

~~—~~The second limitation (Rule 3.02, subd. 2~~(2)~~) is that if the court ~~which issued the warrant~~ is not ~~then~~ in session, the defendant ~~shall~~ must be taken before the nearest available judge ~~or judicial officer~~ of the issuing court without unnecessary delay, but ~~in any event~~ not more than 36 hours after the arrest or as soon after the 36-hour period as a judge ~~or judicial officer~~ of the issuing court is available. ~~(This rule changes Minn. Stat. § 629.46 (1971) in that it does not require that the defendant be brought before a judge or judicial officer of the issuing court in the county from which the warrant was issued. The rule requires only that the defendant be brought before a judge or judicial officer of the issuing court.)~~

~~This second limitation (Rule 3.02, subd. 2(2)) does not provide an automatic 36-hour period during which the defendant may be held without a court appearance. It is the intention of the rule that the defendant be brought before a proper judge or judicial officer as soon as one becomes available within the 36 hours. The rule recognizes, however, that there may be unusual circumstances in which a proper judge or judicial officer may not become available within that period and provides for that contingency.~~

In computing the 36-hour time limit in Rule 3.02, subd. 2~~(2)~~, the day of arrest is not ~~to be~~ counted. The 36 hours begin to run at midnight following the arrest. Also, Rule 34.01 expressly does not apply to Rule 3.02, subd. 2~~(2)~~. Saturdays~~, Sundays, and legal holidays, therefore,~~ are to be counted in computing the 36-hour time limit under this rule. (See also Rule 4.02, subd. 5).

~~Rule 3.02, subd. 3 prescribing the form of summons follows substantially F.R.Crim.P. 4(b)(2) except that Rule 3.02, subd. 3 requires that the summons shall be accompanied with a copy of the complaint. Failure to attach a copy of the complaint does not constitute a jurisdictional defect. (See Hetland and Adamson, Minnesota Practice (1970), Comments, Minn.R.Civ.P. 3.02, pp. 228, 229.)~~

~~—~~

~~*Under Rule 3.03, subd. 1, a warrant may be executed by any officer authorized by law (See Comment to Rule 3.01) (See also F.R.Crim.P. 4(c)(1)), and a summons may be served by any officer authorized to serve a warrant except that a summons may be served by mail by the clerk or deputy clerk of the issuing court. (F.R.Crim.P. 4(c)(1) provides that a summons may be served by anyone authorized to serve a summons in a civil action. It was the opinion of the Advisory Committee that criminal process should be served by someone in an official court connected capacity.)*~~

The provisions of Rule 3.03, subd. 2 that a warrant may be executed or a summons served at any place within the State is in accord with existing law governing service of criminal process ~~*(Minn. Stat. §§ 629.40- 629.43, 488.05, subd. 3, 488A.01, subd. 8, 488A.18, subd. 9, 487.22)*~~*. The phrase "except where prohibited by law" was added to exclude those places, such as federal reservations, where state service of process may be prohibited by law.*

~~*Rule 3.03, subd. 3 provides that the warrant shall be executed by arresting the defendant. The prohibition against an arrest on Sunday or between the hours of 10:00 p.m. and 8:00 a.m. unless expressly authorized on the warrant adopts Minn.Stat. § 629.31 (1988). The exigency requirement for permitting an arrest during the proscribed time is in addition to and not in conflict with the statute and is in accord with the historical practice. The minor nature of misdemeanors should not ordinarily justify an arrest during the proscribed period of time. The issuing officer may not, therefore, give blanket authorization on the warrant for all such arrests, but rather shall endorse the authorization on the warrant only when such an arrest is required by exigent circumstances.*~~

~~*Otherwise, the time and manner of making the arrest is left to existing statutory law. (See Minn.Stat. §§ 629.31 (as to time in the case of felonies and gross misdemeanors), 629.32, 629.33 (1971) (as to manner).) The provision of Rule 3.03, subd. 3 that the arresting officer need not have the warrant in possession is in accord*~~

~~*with Minn.Stat. § 629.32 (1971). The provision that the defendant shall be informed of the existence of the warrant and of the charge follows F.R.Crim.P. 4(c)(3). In Rule 3.03, subd. 3 there is no specific requirement as in Minn.Stat.§ 629.32 (1971) and F.R.Crim.P. 4(c)(3) that the defendant be shown the warrant upon request as soon as possible. When brought promptly before a judge or judicial officer following arrest the warrant and complaint will be available to the defendant.*~~

~~*The provision of Rule 3.03, subd. 3 that summons may be served by mail follows ABA Standards, Pre-Trial Release, 3.4 (Approved Draft, 1968), F.R.Crim.P. 4(3), and ALI Model Code of Pre-Arraignment Procedure, § 120.4 (Proposed Official Draft # 1, 1972). The provision for personal or substituted service comes from F.R.Crim.P. 4(c)(4).*~~

For service of summons on corporations, Rule 3.03, subd. 3 adopts the method prescribed by law for service of process in civil actions. ~~(~~See Minn.R.Civ.P. 4.03(c)~~)~~.

~~*Rule 3.03, subd. 4 providing for proof of the execution of a warrant or service of a summons to be made by the certificate of the officer executing the warrant or serving the summons is taken from F.R.Crim.P. 4(c)(4) as is the provision for execution or service of an unexecuted warrant or unserved summons.*~~

~~*Rule 3.04, subd. 1 permitting an amendment of a warrant or summons for defects in form is taken from Uniform Rules of Criminal Procedure 5(e)(1) (approved 1952).*~~

~~*Rule 3.04, subd. 2 adopts the substance of Uniform Rules of Criminal Procedure 5(e)(2) (approved 1952). This rule permits the court to continue any pretrial proceedings to enable the prosecuting attorney to file a new complaint when a motion is made for that purpose upon any of the grounds specified in the rule, and contemplates that if the proceedings are continued the prosecuting attorney shall move promptly to file a new complaint. For similar provisions see Rule 11.05 (Amendment of Complaint at Omnibus Hearing), Rule 17.05*~~

~~*(Amendment of Indictment or Complaint), and Rule 17.06, subd. 4 (Effect of Determination of Motion to Dismiss an Indictment or Complaint).*~~	

Proposed Revisions to Minn. R. Crim. P. 4

Original Language Showing Markup	Proposed Revised Language
Rule 4. Procedure upon Arrest ~~under~~ With Warrant Following a Complaint or Without a Warrant	**Rule 4. Procedure upon Arrest With a Warrant Following a Complaint or Without a Warrant**
Rule 4.01 Arrest ~~Under~~ With a Warrant	**Rule 4.01 Arrest With a Warrant**
A defendant arrested ~~under~~ with a warrant ~~issued upon a complaint shall~~ must be taken before a ~~court,~~ judge ~~or judicial officer~~ as directed in the warrant.	A defendant arrested with a warrant must be taken before a judge as directed in the warrant.
Rule 4.02 Arrest Without a Warrant	**Rule 4.02 Arrest Without a Warrant**
Following an arrest without a warrant:	Following an arrest without a warrant:
Subd. 1. Release by Arresting Officer. If the arresting officer or the officer's superior determines that further detention is not justified, ~~such officer or the officer's superior~~ the arrested person ~~shall~~ must be immediately released. ~~the arrested person from custody.~~	Subd. 1. Release by Arresting Officer. If the arresting officer or the officer's superior determines that further detention is not justified, the arrested person must be immediately released.
Subd. 2. Citation. The arresting officer or the officer's superior may issue a citation ~~to~~ and release the arrested person, ~~as provided by these rules,~~ and must do so if ordered by the ~~prosecuting attorney~~ prosecutor or by a judge ~~or judicial officer~~ of the district court ~~of the county~~ where the alleged offense occurred. ~~or by any person designated by the court to perform that function.~~	Subd. 2. Citation. The arresting officer or the officer's superior may issue a citation and release the arrested person, and must do so if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred.
Subd. 3. Notice to ~~Prosecuting Attorney~~ Prosecutor. ~~As soon as practical after the arrest,~~ The arresting officer or the officer's superior ~~shall~~ must notify the ~~prosecuting attorney~~ prosecutor of the arrest as soon as practicable.	Subd. 3. Notice to Prosecutor. The arresting officer or the officer's superior must notify the prosecutor of the arrest as soon as practicable.
Subd. 4. Release by ~~Prosecuting Attorney~~Prosecutor. The ~~prosecuting attorney~~ prosecutor may order the arrested person released from custody.	Subd. 4. Release by Prosecutor. The prosecutor may order the arrested person released from custody.
Subd. 5. Appearance Before Judge ~~or Judicial Officer~~.	Subd. 5. Appearance Before Judge. (1) Before Whom and When. An arrested

(1) Before Whom and When. An arrested person who is not released ~~pursuant to~~under this rule or Rule 6, ~~shall~~ must be brought before the nearest available judge ~~of the district court~~ of the county where the alleged offense occurred~~ or judicial officer of such court~~. The defendant shall be brought before ~~such~~ a judge ~~or judicial officer~~ without unnecessary delay, and ~~in any event,~~ not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon ~~thereafter~~ as ~~such~~ a judge ~~or judicial officer~~ is available. ~~Provided, however,~~ I~~i~~n misdemeanor cases, a defendant who is not brought before a judge ~~or judicial officer~~ within the 36-hour limit~~, shall~~ must be released upon citation, as provided in Rule 6.01, subd. 1.	person who is not released under this rule or Rule 6, must be brought before the nearest available judge of the county where the alleged offense occurred. The defendant must be brought before a judge without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon as a judge is available. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, subd. 1.
(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge~~At or~~ before the ~~time of the defendant's~~ appearance ~~as required by~~under Rule 4.02, subd. 5(1)~~, a complaint shall be presented to the judge, or judicial officer referred to in Rule 4.02, subd. 5(1) or to any judge or judicial officer authorized to issue criminal process upon the offense charged in the complaint.~~. The complaint ~~shall~~ must be filed ~~forthwith~~ promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the ~~prosecuting attorney~~ prosecutor or the certificate of the judge ~~or judicial officer~~ as provided by Rule 2.02; and (2) the judge ~~or judicial officer~~ determines from the facts ~~set forth separately~~presented in writing in or with the complaint, and any supporting affidavits or supplemental sworn testimony, that ~~there is~~ probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant~~s~~ ~~shall~~ must be ~~discharged~~ released, the complaint and any supporting papers ~~shall~~ must not be filed, and no record made of the proceedings.	(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting affidavits or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released, the complaint and any supporting papers must not be filed, and no record made of the proceedings.
(3) Complaint or Tab Charge; ~~-~~Misdemeanors; Designated Gross Misdemeanors. If ~~there is~~ no complaint ~~made and~~ is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross	(3) Complaint or Tab Charge; Misdemeanors; Designated Gross Misdemeanors. If no complaint is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross

misdemeanor charge for ~~those~~ offenses designated under Rule 1.04(b), the ~~clerk shall~~ court administrator must enter upon the records a tab charge, as defined in Rule 1.04(c) of these rules. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint ~~shall~~must be ~~made and~~ filed.

In a designated gross misdemeanor case commenced by a tab charge, the complaint ~~shall~~ must be ~~made,~~ served and filed within 48 hours of the defendant's appearance on the tab charge if the defendant is in custody, or within 10 days of the ~~defendant's~~ appearance ~~on the tab charge~~ if the defendant is not in custody, provided that ~~in any such case~~ the complaint ~~shall~~must be ~~made,~~ served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of ~~such~~ a gross misdemeanor complaint ~~shall~~must be as provided by Rule 33.02 and may include service by U.S. mail.

In a misdemeanor case, the complaint ~~shall~~must be ~~made and~~ filed within 48 hours after ~~the~~ demand ~~therefor~~ if the defendant is in custody, or within ~~thirty (~~30~~)~~ days of ~~such~~ the demand if the defendant is not in custody.

If no ~~valid~~ complaint ~~has been made and~~is filed within the time required by this rule, the defendant ~~shall~~must be discharged, the ~~proposed~~ complaint~~, if any,~~ and any supporting papers ~~shall~~must not be filed, and no record ~~shall~~will be made of the proceedings.

A complaint is valid when it: (1) complies with the requirements of Rule 2~~,~~; and (2) the judge has determined from the complaint and any supporting affidavits or supplemental sworn testimony that ~~there is~~ probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant ~~shall~~must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint~~ is thereafter filed~~, a warrant ~~shall~~must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response ~~thereto~~.

misdemeanor charge for offenses designated under Rule 1.04(b), the court administrator must enter upon the records a tab charge, as defined in Rule 1.04(c) of these rules. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge, the complaint must be served and filed within 48 hours of the defendant's appearance on the tab charge if the defendant is in custody, or within 10 days of the appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02 and may include service by U.S. mail.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged, the complaint and any supporting papers must not be filed, and no record will be made of the proceedings.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting affidavits or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

Rule 4.03 Probable Cause Determination	**Rule 4.03 Probable Cause Determination**
Subd. 1. Time Limit. When a person arrested without a warrant is not ~~earlier~~ released ~~pursuant~~under ~~to~~ this rule or Rule 6, a judge ~~or judicial officer shall~~must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or does not make a ~~if there is no~~ determination as to probable cause within the time ~~as~~ provided by this rule, the person ~~shall~~must be released immediately.	Subd. 1. Time Limit. When a person arrested without a warrant is not released under this rule or Rule 6, a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or does not make a determination as to probable cause within the time provided by this rule, the person must be released immediately.
Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, ~~shall~~must be submitted ~~upon~~under oath, either orally or in writing. The oath ~~shall be administered by the judge or judicial officer for any facts submitted orally and~~ may ~~also~~ be administered by the ~~clerk or deputy clerk of~~ court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device. Any oral testimony ~~shall~~must be recorded by reporter or recording instrument and ~~shall~~must be retained by the ~~judge or judicial officer~~court or by the judge's ~~or judicial officer's~~ designee. ~~Any written or oral facts or other information submitted upon oath to establish probable cause may be made or taken by telephone, facsimile transmission, video equipment or similar device at the discretion of the reviewing judge or judicial officer.~~ The person requesting a probable cause determination ~~shall~~must advise the reviewing judge ~~or judicial officer~~ of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.	Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, must be submitted under oath, either orally or in writing. The oath may be administered by the court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath must be administered by a judge, but it may be administered by telephone, ITV, or similar device. Any oral testimony must be recorded by reporter or recording instrument and must be retained by the court or by the judge's designee. The person requesting a probable cause determination must advise the reviewing judge of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.
Subd. 3. ~~Prosecuting Attorney~~Prosecutor. No request for determination of probable cause may proceed without the approval~~, in writing or orally on the record,~~ of the ~~prosecuting~~	Subd. 3. Prosecutor. No request for determination of probable cause may proceed without the approval of the prosecutor authorized to prosecute the matter, or by affirmation of the

~~attorney~~prosecutor authorized to prosecute the matter~~ involved~~, or by affirmation of the applicant ~~upon the application~~ that the applicant ~~has~~ contacted the ~~prosecuting attorney~~prosecutor and the ~~prosecuting attorney~~prosecutor~~ has~~ approved the request, or unless the judge ~~or judicial officer~~ reviewing probable cause certifies in writing that the ~~prosecuting attorney~~prosecutor is unavailable and the determination of probable cause should not be delayed. ~~If, in the discretion of the prosecuting attorney, a complaint complying with Rule 2 is obtained within the time limit provided by this rule, it shall not be necessary to obtain any further determination of probable cause under this rule to justify continued detention of the defendant.~~A complaint complying with Rule 2, approved by the court, satisfies the probable cause requirement of this rule.

Subd. 4. Determination. ~~Upon the information presented, the Court shall determine whether there is probable cause to believe that an offense has been committed and that the person arrested committed the offense.~~ If ~~probable cause is found~~the information presented satisfies the court that probable cause exists to believe that an offense has been committed and the person arrested committed it, the ~~Court~~court may set bail or other conditions of release, or release the arrested person without bail, ~~pursuant to~~under Rule 6. If probable cause is not found, the arrested person ~~shall~~must be released immediately. The ~~determination of the Court shall~~court's finding of probable cause must be in writing, and ~~shall~~must indicate ~~whether probable cause was found, and, if so, for what~~the offense, whether oral testimony was received~~ concerning probable cause~~, and the amount of any bail or other conditions of release ~~which~~ the ~~Court~~court may ~~have~~ set. A written notice of the ~~Court's~~court's determination ~~shall~~must be provided promptly to the arrested person ~~forthwith~~.

Comment—Rule 4

~~*By Rule 4.01 a defendant arrested following a complaint shall be dealt with as directed by Rule 3.02, subd. 2.*~~

applicant that the applicant contacted the prosecutor and the prosecutor approved the request, or unless the judge reviewing probable cause certifies in writing that the prosecutor is unavailable and the determination of probable cause should not be delayed. A complaint complying with Rule 2, approved by the court, satisfies the probable cause requirement of this rule.

Subd. 4. Determination. If the information presented satisfies the court that probable cause exists to believe that an offense has been committed and the person arrested committed it, the court may set bail or other conditions of release, or release the arrested person without bail, under Rule 6. If probable cause is not found, the arrested person must be released immediately. The court's finding of probable cause must be in writing, and must indicate the offense, whether oral testimony was received, and the amount of any bail or other conditions of release the court may set. A written notice of the court's determination must be provided promptly to the arrested person.

Comment—Rule 4

It is anticipated that complaints will be requested by defendants in only a small percentage of misdemeanor cases because discovery is permitted under Rule 9.04, and most defendants will not wish to make an additional

~~*Rule 4.02, subd. 1 directs an officer who makes an arrest without a warrant or the officer's superior to release the arrested person before the initial appearance in court without proceeding further, if the officer determines that further detention is not justified. This might occur when, for example, further investigation disclosed to the satisfaction of the officer that the defendant did not commit the offense for which arrested. (See similar provisions in ALI Model Code of Pre-Arraignment Procedure, § 120.9(2) (Proposed Official Draft # 1, 1972), Wis.Stat. § 968.08).*~~

~~*Rule 4.02, subd. 4 similarly authorizes the prosecuting attorney*~~ *prosecutor* ~~*to order the release of a person arrested without a warrant.*~~ *without proceeding further. This would* ~~*must occur, for example, if the prosecuting attorney*~~*prosecutor* ~~*decides not to file a complaint.*~~

~~*Rule 4.02, subd. 3 provides that the prosecuting attorney shall be notified of an arrest without a warrant as soon as practical in order to determine whether to continue the prosecution and if so, to draw a complaint.*~~

~~*Rule 4.02, subd. 2 provides that the officer arresting without a warrant or the officer's superior may issue a citation as provided by Rule 6.01 and must do so if ordered by the prosecuting attorney or by a judge or judicial officer described in the rule.*~~

~~*Rule 4.02, subd. 5(1) prescribing the time within which a person arrested without a warrant shall be first brought before the court recognizes that additional time is needed to determine whether to continue the prosecution and to draw the complaint. So there is no requirement that the defendant be brought promptly before the appropriate court after arrest if the court is in session, but it is necessary under Rule 4.02, subd. 5(1) that the defendant be brought before such court without "unnecessary delay". (Compare Rule 3.02, subd. 2.) The 36-hour period does not include the day of arrest, Sundays, or legal holidays. Otherwise the intent of Rule 4.02, subd. 5(1) and Rule 3.02, subd. 2 is the same, namely, that the 36-hour period is not an automatic*~~ *appearance to receive the complaint.*

Where a charge has been dismissed by the court for failure of the prosecutor to file a valid, timely complaint (Rule 4.02, subd. 5(3)) as required, and the prosecutor subsequently files a valid complaint, a summons must issue instead of a warrant. If it is impossible to locate the defendant to serve the summons or if the defendant fails to respond to the summons, a warrant may be issued. (See also Rule 3.01). This restriction is necessary because it is unfair to subject a defendant to a possibly unnecessary arrest when the defendant has appeared in court once to answer the minor charge, and, through no fault of the defendant, a complaint was not issued.

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, 500 U.S. 44 (1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit. Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules.

Rule 4.03, subd. 4, sets out the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules.

holding period and that the defendant shall be brought before the court at the earliest possible time within the period. In exceptional cases, however, the prosecuting attorney shall not be precluded by this section from seeking relief pursuant to Rule 34.02. The effect of failure to comply with Rules 4.02, subd. 5(1) and 3.02, subd. 2 on the admission of confessions or other evidence or on the jurisdiction of the court is left to case-by-case development. In State v. Wiberg, 296 N.W.2d 388 (Minn.1980) the Supreme Court held that violation of the time limits set forth in Rule 4.02, subd. 5(1) does not require the automatic exclusion of statements made which have a reasonable relationship to the violation. Rather, the admissibility of the statements depends on such factors as the reliability of the evidence, the length of the delay, whether the delay was intentional, and whether the delay compounded the effects of other police misconduct. In Wiberg the Supreme Court found a violation of Rule 4.02, subd. 5(1) even though 36 hours had not yet elapsed exclusive of the day of arrest. The court noted that such unexplained delays as occurred in Wiberg should weigh heavily in the trial court's determination of whether to exclude any statements. For the application of this same suppression test to identification evidence see Meyer v. State, 316 N.W.2d 545 (Minn.1982).

Where the defendant agrees, Rule 4.02, subd. 5(3) provides the procedure for initiating misdemeanor proceedings or designated gross misdemeanor proceedings as defined in Rule 1.04(b) without the necessity of issuing a complaint or obtaining an indictment as is required for felonies and other gross misdemeanors. This is provided to avoid the unnecessary delay for a defendant and to aid a prosecutor in those cases where the defendant may not even desire a complaint if sufficiently informed in some other way of the charges. When a defendant first appears in court following a warrantless arrest in such cases, the clerk shall enter on the records a brief statement (tab charge) of the offense charged, including a citation to the statute, ordinance, rule, regulation or provision of law which the defendant is alleged to have violated. This statement shall be a substitute for the complaint and is sufficient to

initiate the proceedings in such cases under Rule 10.01 unless the defendant, defense counsel or the court requests, in misdemeanor cases, that a complaint be filed and provided that in gross misdemeanor proceedings under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 the complaint must be made, served and filed within the time limits as specified unless the defendant has entered a guilty plea before then. This provision for tab charges is substantially consistent with present Minnesota law for misdemeanors although under the present statutes the right to a complaint varies from court to court. See Minn. Stat. § 487.25, subd. 4, and Minn. Stat. § 488A.10, subd. 4 (In the county courts and in Hennepin County Municipal Court, a tab charge is sufficient unless the judge orders or the defendant requests a complaint); Minn. Stat. § 488A.27, subd. 4 (In St. Paul a tab charge is sufficient unless the judge orders a complaint); and Minn. Stat. § 488.17, subd. 4 (In any other municipal court the tab charge is sufficient where the defendant is in custody when appearing before the court, unless the court orders a complaint).

Rule 4.02, subd. 5(3) permits the use of a tab charge to initiate a prosecution for a designated gross misdemeanor charged under Minn. Stat.§ 171.24, Minn. Stat. § 169A.20, Minn. Stat. § 169A.25, or Minn. Stat. § 169A.26. Rule 1.04(b) defines designated gross misdemeanor. The provisions concerning tab charges were extended to gross misdemeanor driving while impaired proceedings because of concern that such proceedings will not otherwise be prosecuted and completed promptly. When the rules were originally promulgated, there were few gross misdemeanor prosecutions. Due primarily to Minn. Stat. §§ 169.121 and 169.129 and their successor statutes, Minn. Stat. §§ 169A.20, 169A.25, and 169A.26, the number of gross misdemeanor prosecutions has increased tremendously. Unfortunately, prosecutorial resources have not increased proportionately and in some jurisdictions prosecutions for gross misdemeanor driving while intoxicated have been delayed substantially pending issuance of complaints. The use of the tab charges should get such cases into court promptly. However, the complaint must be made, served and filed within

~~*the time limits as specified in the rule. The rule further requires that prior to acceptance of a guilty plea to a designated gross misdemeanor, a complaint must be made, served and filed. This requirement is included because of concern that a case should be reviewed by a prosecutor before acceptance of a guilty plea to an offense for which a defendant, particularly a pro se defendant, could receive a sentence of imprisonment of up to one or two years. All other non designated gross misdemeanors must be charged initially by complaint or indictment as required by Rules 4.02, subd. 5(2) and 17.01. Except for the use of the tab charge, the procedure for designated gross misdemeanor prosecutions is the same as for gross misdemeanor prosecutions under any other statute. Under the rule the defendant need not be required to personally appear in court to receive the complaint when it is later issued. Service could be made by mail on the defendant or defense counsel as appropriate. The defendant could be arraigned on the complaint at the next court appearance after the filing and service of the complaint. That next court appearance could be under Rule 8 or at the omnibus hearing under Rule 11 if the Rule 5 and 8 appearances were consolidated under Rule 5.03 with the consent of the defendant. If no valid complaint is filed as required by the rules, the proceedings are dismissed. See Rule 17.06 subd. 4(3) as to any restrictions or bars on further prosecution after such a dismissal.*~~

~~*Under Rule 5.01 a defendant must be advised of the right to demand a complaint.*~~ *It is anticipated that complaints will be requested by defendants in only a small percentage of misdemeanor cases because discovery is permitted under Rule 9.04~~7.03~~, and most defendants will not wish to make an additional appearance to receive the complaint.*

~~*If a complaint is required under this rule in a misdemeanor case, the prosecutor must file a valid complaint within 48 hours if the defendant is in custody or within 30 days if the defendant is not in custody or the tab charge must be dismissed. A longer time limit than 48 hours for those defendants in custody would encourage defendants who are in jail pending issuance of a*~~

~~*complaint to waive that right in order to speed up the disposition of the charges. Time limits, of course, can be waived by a defendant. A defendant who is not in custody, may wish to request a later time to receive the complaint, for the defendant's convenience and that of the defense counsel and the prosecutor.*~~

~~*A complaint to be valid must comply with the requirements of Rule 2 and the issuing officer must have made a determination of probable cause.*~~

Where a charge has been dismissed by the court for failure of the prosecutor to file a valid, timely complaint (Rule 4.02, subd. 5(3)) as required, and the prosecutor subsequently files a valid complaint, a summons must ~~be issued~~issue instead of a warrant. If it is impossible to locate the defendant to serve the summons or if the defendant fails to respond to the summons, a warrant may be issued. (See also Rule 3.01). This restriction is ~~considered justified~~necessary ~~since~~because it is unfair to subject a defendant to a possibly unnecessary arrest when the defendant has appeared in court once to answer the minor charge, and, through no fault of the defendant, a complaint was not issued ~~at that time~~.

~~*Where the tab charge has been dismissed for failure to file a valid, timely complaint as required, the prosecutor must file a valid complaint within the time specified by Rule 17.06, subd. 4(3) or any further prosecution is barred if so ordered by the court.*~~

~~*When a valid complaint has been filed or waived, defendant will be arraigned pursuant to Rule 5.*~~

~~*Rule 4.02, subd. 5(2) provides that on or before the first appearance of a person arrested without a warrant a complaint shall be filed provided it has the written approval of the prosecuting attorney or the certificate of the court as provided in Rule 2.02 and the judge or judicial officer has made a finding of probable cause. Otherwise the defendant shall be discharged. The rule is not intended to cover the effect of the discharge on subsequent prosecution for the same offense or conduct. (See State v.*~~

~~*Uglum, 175 Minn. 607, 222 N.W. 280 (1928).)*~~

~~*Rule 4.02, subd. 5(2) permits the complaint to be presented either to the judge or judicial officer before whom the defendant will appear or to any judge or judicial officer authorized to issue a warrant of arrest upon the complaint. If the judge or judicial officer to whom the complaint is presented determines that there is probable cause to believe that defendant committed the offense charged, the complaint shall be filed, and in lieu of a warrant of arrest (which is the present practice), an order for detention of the defendant pending further proceedings shall be issued.*~~

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, 500 U.S. 44~~*, 111 S.Ct. 1661, 114 L.Ed.2d 49*~~ *(1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit.*~~*; Rule 34.01 does not apply. Even a probable cause determination within 48 hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake." County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Rule 4.03 are in addition to the requirements of Rule 4.02 that a person arrested without a warrant be brought before a judge or judicial officer within 36 hours after the arrest exclusive of the day of arrest, Sundays and legal holidays. Because of the exclusions permitted in computing time under the "36 hour rule", compliance with that rule will not assure compliance with the "48 hour rule". However, if a defendant does appear in court within the time limits of the "48-hour rule" as well as the "36-hour rule" and a valid complaint is then issued, Rule 4.03 is satisfied and no further determination of probable cause is necessary.*~~

~~*The "48 hour rule" also applies to all*~~

~~*misdemeanor cases. For gross misdemeanors prosecuted as "designated gross misdemeanors" as defined by Rule 1.04(b) and for misdemeanors, Rule 4.02, subd. 5(3) requires only that a tab charge be entered on the records at the time of a defendant's appearance in Court within the "36-hour rule". A complaint may be issued at that time but is not then required and Rule 4.02, subd. 5(3) governs when and if a complaint is subsequently required. However, the requirements of Rule 4.03 still apply and, even if not requested by a defendant, there must be a judicial determination of probable cause within 48 hours of an arrest and detention or the arrested person must be released whether the offense involved is a felony, gross misdemeanor, or misdemeanor.*~~ *Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.*

~~*Release of an arrested person pursuant to Rule 4.03, subd. 1 because of a determination that probable cause does not exist, or because no determination is made within the specified time limit, doe not prevent later prosecution for the offense involved or arrest for a different incident. However, it is not permissible to attempt to extend the time limit of the rule by releasing and then rearresting an individual without a warrant without additional facts to establish probable cause. As it is for the "36 hour rule" these rules do not provide sanctions for violation of the "48-hour rule". That is left to case law development. See State v. Wiberg, 296 N.W.2d 388 (Minn.1980) as to the possible suppression of evidence for violation of the "36 hour rule".*~~

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules. ~~*If oral testimony is submitted, the oath shall be administered by the judge or judicial officer, but may be done by telephone, facsimile transmission, video equipment or similar device in the discretion of the reviewing judge or judicial officer. As of*~~

~~*May, 1992, the only judicial officer in Minnesota serves in St. Louis County pursuant to Minn. Stat. § 487.08. See Rule 33.05 as to use of facsimile transmission generally. Any written affidavits submitted may be sworn to before a clerk or deputy clerk of court or notary public as well as before the reviewing judge or judicial officer. The procedure for obtaining the probable cause determination is similar to that for obtaining a complaint under Rule 2 and no appearance by the arrested person is required.*~~

~~*Under Rule 4.03, subd. 3 the prosecuting attorney's written or oral approval is necessary in the probable cause proceedings. However, as for complaints under Rule 2.02, the court may proceed without such approval upon certifying in writing that the prosecuting attorney is unavailable and the determination of probable cause should not be delayed. Instead of obtaining a probable cause determination under Rule 4.03, the prosecuting attorney has the option of obtaining a complaint complying with Rule 2 within the time limit provided by Rule 4.03. If that is done, the time for the defendant's appearance before the judge or judicial officer is still governed by the "36 hour" provision of Rule 4.02.*~~

Rule 4.03, subd. 4, sets ~~forth~~out the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules. ~~*If need not contain a recitation of the facts upon which the court's determination was based. The court may set bail or other conditions of release. If the court sets conditions other than money bail on which the defendant may be released, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain release. See Rule 6.01, subd. 1 and the comments to that rule. The arrested person must be provided with a written notice of the court's determination forthwith. See Form 46, Notice of Judicial Determination of Probable Cause to Detain, following the rules. It is not necessary that the actual determination or a copy of it be provided to the arrested person forthwith. That may be difficult or impossible in some cases, particularly if the telephone or other electronic*~~

~~*means were used in obtaining the determination. The written notice containing the elements of the determination may be prepared by someone other than the reviewing judge or judicial officer. See Minn. Stat. § 611.32, subd. 2 and State v. Mitjans, 408 N.W.2d 824 (Minn.1987) as to the obligation of a law enforcement officer, with the assistance of an interpreter, to explain to an arrested person handicapped in communication all charges filed against the person and all procedure relating to the person's detainment and release. It is not necessary to forthwith provide the arrested person with any affidavits, transcribed testimony, or other materials submitted to the court upon the application for a probable cause determination. If prosecution is commenced, those materials may be obtained by the defendant later through discovery under Rule 9.01, subd. 1 for felonies and gross misdemeanors and under Rule 7.03 for misdemeanors. Otherwise, access to any such materials is governed by Minn. Stat. § 13.82 of the Minnesota government data practices act.*~~	

Proposed Revisions to Minn. R. Crim. P. 5

Original Showing Markup	Proposed Revised Language
Rule 5. Procedure on First Appearance **Rule 5.01 Purpose of First Appearance** (a) The purpose of the first appearance is for the court to inform the defendant of the: (1) charge(s); (2) defendant's rights, including the right to have counsel appointed if eligible; and (3) opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08. (b) The court must first determine whether a defendant is disabled in communication as defined in Rule 5.02. (c) The court must ensure the defendant has a copy of the complaint, citation, or written tab charge. (d) The court must set bail and other conditions of release under Rule 6.02. (e) On the prosecutor's motion, the court must require that the defendant be booked, photographed, and fingerprinted. **Rule ~~5.01 Statement to the Defendant~~5.02 Requirement for Interpreter** ~~A defendant arrested with or without a warrant or served with a summons or citation appearing initially before a judge or judicial officer, shall be advised of the nature of the charge. The court shall first determine whether the defendant is handicapped in communication.~~ A defendant is ~~handicapped~~ disabled in communication if, due to ~~(a) because of either~~ a hearing, speech or other communications disorder~~,~~ or ~~(b), because of~~ difficulty in speaking or comprehending the English language, the defendant cannot fully understand the proceedings, ~~or~~ any charges made ~~against the defendant~~, or is incapable of presenting or assisting in the presentation of a	**Rule 5. Procedure on First Appearance** **Rule 5.01 Purpose of First Appearance** (a) The purpose of the first appearance is for the court to inform the defendant of the: (1) charge(s); (2) defendant's rights, including the right to have counsel appointed if eligible; and (3) opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08. (b) The court must first determine whether a defendant is disabled in communication as defined in Rule 5.02. (c) The court must ensure the defendant has a copy of the complaint, citation, or written tab charge. (d) The court must set bail and other conditions of release under Rule 6.02. (e) On the prosecutor's motion, the court must require that the defendant be booked, photographed, and fingerprinted. **Rule 5.02 Requirement for Interpreter** A defendant is disabled in communication if, due to a hearing, speech or other communications disorder or difficulty in speaking or comprehending the English language, the defendant cannot fully understand the proceedings or any charges made, or is incapable of presenting or assisting in the presentation of a defense. If a defendant is disabled in communication, the judge must appoint a qualified interpreter under Rule 8 of the Minnesota Rules of General Practice for the District Courts to assist the defendant throughout the proceedings. The proceedings that require a qualified interpreter include any proceeding

defense. If a defendant is ~~handicapped~~disabled in communication, the judge ~~or judicial officer shall~~must appoint a qualified interpreter under Rule 8 of the Minnesota Rules of General Practice for the District Courts to assist the defendant throughout the proceedings. The proceedings ~~at which~~that require a qualified interpreter ~~is required are all those covered by these rules which are~~include any proceeding attended by the defendant. ~~A defendant who has not previously received a copy of the complaint, if any, and supporting affidavits and the transcription of any supplementary testimony, shall be provided with copies thereof. Upon motion of the prosecuting attorney, the court shall require that the defendant be booked, photographed, and fingerprinted. In felony cases, the defendant shall not be called upon to plead.~~	attended by the defendant.
Rule 5.03 Statement of Rights The ~~judge, judicial officer, or other duly authorized personnel shall~~ court must advise the defendant ~~substantially as follows~~of the following: (a) ~~That t~~The ~~defendant is not required to say anything or~~right to remain silent and not submit to interrogation~~; and that~~; (b) ~~a~~Anything the defendant says may be used against the defendant in this or any subsequent proceeding; (~~b~~c) ~~That the defendant has a~~The right to counsel in all ~~subsequent~~ proceedings, including police line-ups and interrogations~~,~~; ~~and~~ (d) ~~if~~If the defendant appears without counsel and is financially unable to ~~afford~~obtain counsel, ~~that~~ counsel will ~~forthwith~~ be appointed ~~without cost to the defendant~~ if the defendant has been charged with an offense punishable ~~upon conviction~~ by incarceration; (~~c~~e) ~~That the defendant has a~~The right to communicate with defense counsel, and that a continuance will be granted if necessary to ~~enable defendant to obtain or speak to counsel~~permit this;	**Rule 5.03 Statement of Rights** The court must advise the defendant of the following: (a) The right to remain silent and not submit to interrogation; (b) Anything the defendant says may be used against the defendant in this or any subsequent proceeding; (c) The right to counsel in all proceedings, including police line-ups and interrogations; (d) If the defendant appears without counsel and is financially unable to obtain counsel, counsel will be appointed if the defendant has been charged with an offense punishable by incarceration; (e) The right to communicate with defense counsel, and that a continuance will be granted if necessary to permit this;

(~~d~~f) ~~That the defendant has a~~The right to a jury trial or a trial to the court;	(f) The right to a jury trial or a trial to the court;
(~~e~~g) ~~That i~~If the offense is a misdemeanor, the defendant may ~~either~~ plead guilty or not guilty, or demand a complaint ~~prior to~~ before entering a plea;	(g) If the offense is a misdemeanor, the defendant may plead guilty or not guilty, or demand a complaint before entering a plea;
(~~f~~h) ~~That i~~If the offense is a designated gross misdemeanor as defined in Rule 1.04(b) and a complaint has not yet been ~~made and~~ filed, a complaint must be issued within 10 days if the defendant is not in custody or within 48 hours if the defendant is in custody~~.~~;	(h) If the offense is a designated gross misdemeanor as defined in Rule 1.04(b) and a complaint has not yet been filed, a complaint must be issued within 10 days if the defendant is not in custody or within 48 hours if the defendant is in custody;
(~~g~~i) ~~That i~~If the offense is a gross misdemeanor and the defendant has had an opportunity to consult with an attorney, the defendant may ~~enter a~~ plead ~~of~~ guilty in accordance with Rule 15.01.	(i) If the offense is a gross misdemeanor and the defendant has had an opportunity to consult with an attorney, the defendant may plead guilty in accordance with Rule 15.01.
The ~~judge, judicial officer, or other duly authorized personnel~~court may advise a number of defendants at once of these rights, but each defendant ~~shall~~must be asked individually ~~before~~at arraignment whether the defendant heard and understood the~~se~~ rights as explained earlier.	The court may advise a number of defendants at once of these rights, but each defendant must be asked individually at arraignment whether the defendant heard and understood the rights as explained earlier.
Rule ~~5.02~~5.04 Appointment of ~~Public Defender~~Counsel	**Rule 5.04 Appointment of Counsel**
Subd. 1. Notice of Right to Counsel; Appointment of the District Public Defender; Waiver of Counsel.	Subd. 1. Notice of Right to Counsel; Appointment of the District Public Defender; Waiver of Counsel.
(1) Notice of Right to Counsel. If a defendant charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration appears without counsel, the court ~~shall~~must advise the defendant of the right to counsel, and that the ~~appointment of~~ court will appoint the district public defender if the defendant has been determined to be financially unable to ~~afford~~obtain counsel. The court ~~shall~~must also advise the defendant ~~of~~that the defendant has the right to request counsel at any stage of the proceedings.	(1) Notice of Right to Counsel. If a defendant charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration appears without counsel, the court must advise the defendant of the right to counsel, and that the court will appoint the district public defender if the defendant has been determined to be financially unable to obtain counsel. The court must also advise the defendant that the defendant has the right to request counsel at any stage of the proceedings.
(2) Appointment of the Public Defender. The court must appoint the district public defender ~~Upon the~~on request of a defendant charged with a felony, gross misdemeanor, misdemeanor punishable by	(2) Appointment of the Public Defender. The court must appoint the district public defender on request of a defendant charged with a felony, gross misdemeanor, misdemeanor punishable by

incarceration, extradition proceeding ~~under section 629~~, or probation revocation proceeding~~,~~ who is not represented by counsel and is financially unable to ~~afford~~obtain counsel~~, the judge or judicial officer shall appoint the public defender for the defendant~~. The court ~~shall~~must not appoint a district public defender ~~to a~~if the defendant ~~who~~ is financially able to retain private counsel but refuses to do so.	incarceration, extradition proceeding, or probation revocation proceeding who is not represented by counsel and is financially unable to obtain counsel. The court must not appoint a district public defender if the defendant is financially able to retain private counsel but refuses to do so.
(3) Waiver of Counsel, Misdemeanor. ~~If a defendant~~Defendants charged with a misdemeanor punishable by incarceration ~~appearing~~who appear without counsel~~ charged with a misdemeanor punishable upon conviction by incarceration~~ , do~~es~~ not request counsel, and wish~~es~~ to represent ~~himself or herself~~themselves, ~~the defendant shall~~must waive counsel in writing or on the record. The court ~~shall~~must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights. The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver.	(3) Waiver of Counsel, Misdemeanor. Defendants charged with a misdemeanor punishable by incarceration who appear without counsel, do not request counsel, and wish to represent themselves, must waive counsel in writing or on the record. The court must not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of the defendant's rights. The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant about the waiver.
(4) Waiver of Counsel, Felony, Gross Misdemeanor. The court must ensure that ~~If a~~ defendant~~s~~ charged with a felony or gross misdemeanor ~~appearing~~who appear without counsel~~, charged with a felony or gross misdemeanor~~ do~~es~~ not request counsel, and wish~~es~~ to represent ~~himself or herself~~themselves, ~~the court shall ensure that~~enter on the record a voluntary and intelligent written waiver of the right to counsel ~~is entered in the record~~. If the defendant refuses to sign the written waiver form, the waiver ~~shall~~must be made ~~orally~~ on the record. ~~Prior to~~Before accepting ~~any~~the waiver, the ~~trial~~ court ~~shall~~must advise the defendant of the following: (a) ~~the~~ nature of the charges~~;~~, (b) ~~the statutory~~ all offenses included within the charges~~;~~, (c) ~~the~~ range of allowable punishments~~;~~, (d) ~~that~~ there may be defenses~~;~~, (e) ~~that there may be~~ mitigating circumstances may exist~~;~~ and (f) ~~and~~ all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel. The court may appoint the district public defender for	(4) Waiver of Counsel, Felony, Gross Misdemeanor. The court must ensure that defendants charged with a felony or gross misdemeanor who appear without counsel, do not request counsel, and wish to represent themselves, enter on the record a voluntary and intelligent written waiver of the right to counsel. If the defendant refuses to sign the written waiver form, the waiver must be made on the record. Before accepting the waiver, the court must advise the defendant of the following: (a) nature of the charges; (b) all offenses included within the charges; (c) range of allowable punishments; (d) there may be defenses; (e) mitigating circumstances may exist; and (f) all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel. The court may appoint the district public defender for the limited purpose of advising and consulting with the defendant as to the waiver.

the limited purpose of advising and consulting with the defendant as to the waiver.	
Subd. 2. Appointment of Advisory Counsel. The court may appoint ~~"~~advisory counsel~~"~~ to assist ~~the accused~~a defendant who voluntarily and intelligently waives the right to counsel.	Subd. 2. Appointment of Advisory Counsel. The court may appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel.
(1) If the court appoints advisory counsel because of ~~its~~ concerns about fairness of the process, the court ~~shall~~must ~~so~~ state that on the record. The court ~~shall~~must~~, on the record then,~~ advise the defendant and advisory counsel ~~so appointed~~on the record that the defendant retains the right to decide when and how ~~the defendant chooses to make~~to use ~~of~~ advisory counsel, and that ~~the~~ decisions ~~on what type of role~~about the use of advisory counsel ~~is permitted~~ may affect a later request by the defendant to allow advisory counsel to assume full representation ~~of the accused~~.	(1) If the court appoints advisory counsel because of concerns about fairness of the process, the court must state that on the record. The court must advise the defendant and advisory counsel on the record that the defendant retains the right to decide when and how to use advisory counsel, and that decisions about the use of advisory counsel may affect a later request by the defendant to allow advisory counsel to assume full representation.
(2) If the court appoints advisory counsel ~~due to~~because of ~~its~~ concerns about delays in completing the trial, ~~because of~~ the potential disruption by the defendant, or ~~because of~~ the complexity or length of the trial, the court ~~shall~~must ~~so~~ state that on the record. The court ~~shall~~must ~~on the record~~ then advise the defendant and advisory counsel ~~so appointed~~on the record that advisory counsel will assume full representation of the ~~accused~~ defendant if the defendant: (a) ~~the defendant~~ becomes so disruptive during the proceedings that ~~such~~the defendant's conduct is determined to constitute a waiver of the right of self representation; or (b) ~~the defendant~~ requests advisory counsel to take over representation during the proceeding.	(2) If the court appoints advisory counsel because of concerns about delays in completing the trial, the potential disruption by the defendant, or the complexity or length of the trial, the court must state that on the record. The court must then advise the defendant and advisory counsel on the record that advisory counsel will assume full representation of the defendant if the defendant: (a) becomes so disruptive during the proceedings that the defendant's conduct is determined to constitute a waiver of the right of self representation; or (b) requests advisory counsel to take over representation during the proceeding.
(3) Advisory counsel must be present in the courtroom during all proceedings ~~in the case~~ and must be served with all documents ~~which must be~~ that would otherwise be served upon an attorney of record.	(3) Advisory counsel must be present in the courtroom during all proceedings and must be served with all documents that would otherwise be served upon an attorney of record.
Subd. 3. Standards for District Public ~~Defense~~Defender Eligibility. A defendant is financially unable to obtain counsel if the defendant meets the standards for eligibility defined in Minn. Stat. § 611.17.~~:~~	Subd. 3. Standards for District Public Defender Eligibility. A defendant is financially unable to obtain counsel if the defendant meets the standards for eligibility defined in Minn. Stat. § 611.17.

~~(1) The defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or~~ ~~(2) The defendant, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter.~~	
Subd. 4. Financial Inquiry. ~~An inquiry to determine financial eligibility of a defendant for the appointment of the district public defender shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the pre-release investigation provided for in Rule 6.02, subd. 3. In no case shall the district public defender be required perform this inquiry or investigate the defendant's assets or eligibility.~~ The court has a duty to conduct a financial inquiry to determine the financial eligibility of a defendant for the appointment of a district public defender as required under Minn. Stat. § 611.17. ~~The inquiry must include the following:~~ ~~(1) the liquidity of real estate assets, including homestead;~~ ~~(2) any assets that can readily be converted to cash or used to secure a debt;~~ ~~(3) the value of all property transfers occurring on or after the date of the alleged offense;~~ ~~(4) the determination of whether transfer of an asset is voidable as a fraudulent conveyance.~~ ~~The burden is on the accused to to show that he or she is financially unable to afford counsel. Defendants who fail to provide the information necessary to determine eligibility shall be deemed ineligible.~~	Subd. 4. Financial Inquiry. The court has a duty to conduct a financial inquiry to determine the financial eligibility of a defendant for the appointment of a district public defender as required under Minn. Stat. § 611.17.
Subd. 5. Partial Eligibility and Reimbursement. The ability to pay part of the cost of adequate representation at any time while the charges are pending against a defendant ~~shall~~must not preclude the appointment of the district public defender for the defendant. ~~The~~If the court, ~~if~~ after ~~previously~~ finding ~~that~~ the defendant ~~is~~ eligible for district public	Subd. 5. Partial Eligibility and Reimbursement. The ability to pay part of the cost of adequate representation at any time while the charges are pending against a defendant must not preclude the appointment of the district public defender for the defendant. If the court, after finding the defendant eligible for district public defender services,

defender services, determines that the defendant now has the ability to pay part of the costs, it may require a defendant, to ~~the extent able, to compensate the governmental unit charged with paying the expense of the appointed public defender~~make partial payment as provided in Minn. Stat. § 611.20.	determines that the defendant now has the ability to pay part of the costs, it may require a defendant, to make partial payment as provided in Minn. Stat. § 611.20.
Rule ~~5.03~~5.05 Date of Rule 8 Appearance ~~in District Court~~; Consolidation of Appearances Under Rule 5 and Rule 8	**Rule 5.05 Date of Rule 8 Appearance; Consolidation of Appearances Under Rule 5 and Rule 8**
If the defendant is charged with a felony or gross misdemeanor ~~and has not waived the right to a separate appearance under Rule 8 as provided in this rule~~, the ~~judge or judicial officer shall~~court must set a date for ~~such~~a Rule 8 appearance before the ~~district~~ court having jurisdiction to try the charged offense ~~charged in accordance with a schedule or other directive established by order of the district court, which appearance date shall not be~~ later than ~~fourteen (~~14~~)~~ days after the defendant's initial appearance ~~before such judge or judicial officer~~ under Rule 5, unless the defendant waives the right to a separate Rule 8 appearance.	If the defendant is charged with a felony or gross misdemeanor, the court must set a date for a Rule 8 appearance before the court having jurisdiction to try the charged offense no later than 14 days after the defendant's initial appearance under Rule 5, unless the defendant waives the right to a separate Rule 8 appearance.
The defendant ~~shall~~must be informed of the time and place of ~~such~~the Rule 8 appearance and ordered to appear as scheduled. The time for appearance may be extended by the ~~district~~ court for good cause.	The defendant must be informed of the time and place of the Rule 8 appearance and ordered to appear as scheduled. The time for appearance may be extended by the court for good cause.
~~Notwithstanding any rule to the contrary, in~~In felony and gross misdemeanor cases, the defendant may ~~be permitted to~~ waive the separate appearances otherwise required by this rule and Rule 8. ~~Any such~~The waiver ~~shall~~must be made either in writing or ~~orally~~ on the record in open court. If the defendant waives a separate appearance under Rule 8 ~~is waived by the defendant~~, all of the functions and procedures provided for by ~~both~~ Rules 5 and ~~Rule~~ 8 ~~shall~~must take place at the ~~one consolidated appearance~~Rule 5 hearing.	In felony and gross misdemeanor cases, the defendant may waive the separate appearances otherwise required by this rule and Rule 8. The waiver must be made either in writing or on the record in open court. If the defendant waives a separate appearance under Rule 8, all of the functions and procedures provided for by Rules 5 and 8 must take place at the Rule 5 hearing.
Rule ~~5.04~~5.06 Plea and Post-Plea Procedure in Misdemeanor Cases	**Rule 5.06 Plea and Post-Plea Procedure in Misdemeanor Cases**
Subd. 1. Entry of Plea in Misdemeanor Cases. ~~When a valid complaint has been made and filed, or a brief statement entered on the record as authorized~~	Subd. 1. Entry of Plea in Misdemeanor Cases. In misdemeanor cases, the arraignment must be conducted in open court. The court must ask the

~~under Rule 4.02, subd. 5(3), the defendant shall be called upon to plead or be given time to plead~~In misdemeanor cases, the court must ask the defendant to enter a plea, or set a date for entry of the plea. The arraignment ~~shall~~must be conducted in open court. A defendant may appear by counsel and a corporation ~~shall~~must appear by counsel or by an ~~duly~~ authorized officer.	defendant to enter a plea, or set a date for entry of the plea. A defendant may appear by counsel and a corporation must appear by counsel or by an authorized officer.
Subd. 2. Guilty Plea; Offenses From Other Jurisdictions. If the defendant enters a plea of guilty, the presentencing and sentencing procedures provided by these rules ~~shall~~must be followed. ~~Following a plea of guilty, the~~The defendant may also request permission under Rule 15.10 to plead guilty to other misdemeanor offenses committed within the jurisdiction of other courts in the state ~~pursuant to Rule 15.10~~.	Subd. 2. Guilty Plea; Offenses From Other Jurisdictions. If the defendant enters a plea of guilty, the presentencing and sentencing procedures provided by these rules must be followed. The defendant may also request permission under Rule 15.10 to plead guilty to other misdemeanor offenses committed within the jurisdiction of other courts in the state.
Subd. 3. Not Guilty Plea and Jury Trial. If the defendant enters a plea of not guilty to a charge ~~on~~ for which the defendant would be entitled to a jury trial, the defendant ~~shall~~must ~~be asked to~~ exercise or waive that right. The defendant may waive the right to a jury trial either ~~personally~~on the record or in writing ~~or orally on the record in open court~~. If the defendant fails to waive or demand a jury trial, a jury trial demand ~~shall~~must be entered in the record.	Subd. 3. Not Guilty Plea and Jury Trial. If the defendant enters a plea of not guilty to a charge for which the defendant would be entitled to a jury trial, the defendant must exercise or waive that right. The defendant may waive the right to a jury trial either on the record or in writing. If the defendant fails to waive or demand a jury trial, a jury trial demand must be entered in the record.
Subd. 4. Demand or Waiver of Evidentiary Hearing. If the defendant pleads not guilty and a notice of evidence and identification procedures has been given by the ~~prosecution~~prosecutor as required by Rule 7.01, the defendant and ~~the prosecution~~prosecutor ~~shall~~must each either waive or demand an evidentiary hearing ~~as provided by~~under Rule 12.04. ~~Such~~The demand or waiver may be made either ~~orally~~ on the record or in writing and ~~shall~~must be made at the first court appearance after the notice has been given by the ~~prosecution~~prosecutor.	Subd. 4. Demand or Waiver of Evidentiary Hearing. If the defendant pleads not guilty and a notice of evidence and identification procedures has been given by the prosecutor as required by Rule 7.01, the defendant and prosecutor must each either waive or demand an evidentiary hearing under Rule 12.04. The demand or waiver may be made either on the record or in writing and must be made at the first court appearance after the notice has been given by the prosecutor.
~~Subd. 5. Special Appearances Abolished. Special appearances are abolished and any challenge to the personal jurisdiction of the court shall be decided as provided in Rule 10.02.~~	

Rule 5.07. Plea and Post-Plea Procedure in Gross Misdemeanor Cases	**Rule 5.07. Plea and Post-Plea Procedure in Gross Misdemeanor Cases**
Subd. 1. Entry of Guilty Plea in Gross Misdemeanor Cases.	Subd. 1. Entry of Guilty Plea in Gross Misdemeanor Cases.
The defendant may plead guilty to a gross misdemeanor charge in accordance with Rule 15.01 if the defendant has counsel, or has had the opportunity to consult with counsel before pleading guilty. If the defendant does not plead guilty, entry of a plea must await the Rule 8 or Omnibus hearing. A corporation must appear by counsel or by a duly authorized officer.	The defendant may plead guilty to a gross misdemeanor charge in accordance with Rule 15.01 if the defendant has counsel, or has had the opportunity to consult with counsel before pleading guilty. If the defendant does not plead guilty, entry of a plea must await the Rule 8 or Omnibus Hearing. A corporation must appear by counsel or by an authorized officer.
Subd. 2. Guilty Plea; Offenses From Other Jurisdictions.	Subd. 2. Guilty Plea; Offenses From Other Jurisdictions.
The procedure in Rule 5.06, subd. 2 applies to gross misdemeanor cases.	The procedure in Rule 5.06, subd. 2 applies to gross misdemeanor cases.
~~Rule 5.05 Bail or Release~~	
~~The judge or judicial officer shall set and advise the defendant of the conditions under which the defendant may be released under these rules for appearance.~~	
Rule 5.08 Plea in Felony Cases	**Rule 5.08 Plea in Felony Cases**
In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus hearing under Rule 11.	In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus hearing under Rule 11.
Rule ~~5.06~~5.09 Record	**Rule 5.09 Record**
Minutes of the proceedings ~~shall~~must be kept unless the ~~judge or judicial officer~~court directs that a verbatim record ~~thereof shall~~ be made~~., and provided that any~~ Any plea of guilty to an offense punishable by incarceration ~~shall~~must comply with the requirements of ~~Rule 13.05 and~~ Rule 15.09.	Minutes of the proceedings must be kept unless the court directs that a verbatim record be made. Any plea of guilty to an offense punishable by incarceration must comply with the requirements of Rule 15.09.
Comment—Rule 5	**Comment—Rule 5**
Rule 5 prescribes the procedure ~~upon~~at the	*Rule 5 prescribes the procedure at the*

defendant's initial appearance ~~before a judge or judicial officer following an arrest with or without a warrant under Rules 3 and 4.01 or in response to a summons under Rule 3 or a citation under Rule 4.02, subd. 2~~. In most misdemeanor cases, the initial appearance will also be the time of arraignment and~~, often, the time of~~ disposition ~~as well~~.

~~Rule 5.01 sets forth the statements and advice to be given to the defendant upon the initial court appearance. Similar provisions appear in ABA Standards, Pre-Trial Release, 4.3 (Approved Draft, 1968), F.R.Crim.P. 5(c), and ALI Model Code of Pre-Arraignment Procedure § 310.1(4)(a) (T.D. # 5, 1972).~~

Rule ~~5.01~~5.02 requires the appointment of a qualified interpreter for a defendant ~~handicapped~~disabled in communication. ~~The rule requires that a qualified interpreter assist such a defendant in all procedures contemplated by these rules. This appointment is mandated by~~ Minn. Stat. § 611.32, subd. 1 ~~(1992)~~ mandates the appointment. ~~A person handicapped in communication is someone who due to a hearing, speech or other communications disorder, or lack of skill in English, is not able to fully understand the judicial proceedings or charges, or is incapable of presenting or assisting in the presentation of a defense.~~ The definition contained in ~~the rule~~Rule 5.02 is the same as that contained in Minn. Stat. § 611.31 ~~(1992)~~. Minn. Stat. § 611.33 ~~(1992)~~ and Rule 8 of the Minnesota Rules of General Practice for the District Courts should be referred to for the definition of qualified interpreter.

~~Rule 5.01 requires that the defendant be provided with copies of the complaint and any supporting affidavits and a copy of the transcript of any supplemental testimony. Ordinarily, the facts showing probable cause will be set forth separately in or with the complaint or in supporting affidavits or both, but in the unusual case when supplemental testimony is taken, the defendant shall be provided with a copy of the transcript as soon as it is available. Of course, in misdemeanor cases and in designated gross misdemeanor cases as defined in Rule 1.04(b) where no complaint has been issued and prosecution is pursuant to a tab charge this defendant's initial appearance. In most misdemeanor cases, the initial appearance will also be the time of arraignment and disposition.

Rule 5.02 requires the appointment of a qualified interpreter for a defendant disabled in communication. Minn. Stat. § 611.32, subd. 1 mandates the appointment. The definition contained in Rule 5.02 is the same as that contained in Minn. Stat. § 611.31. Minn. Stat. § 611.33 and Rule 8 of the Minnesota Rules of General Practice for the District Courts should be referred to for the definition of qualified interpreter.

The warning under Rule 5.03 as to the defendant's right to counsel continues the requirement of Minn. Stat. § 611.15. See St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972), recognizing that misdemeanors authorizing a sentence of incarceration are criminal offenses and criminal procedures must be followed.

Under Rules 5.03(i) and 5.07, a defendant may plead guilty to a gross misdemeanor at the first appearance under Rule 5 in accordance with the guilty plea provisions of Rule 15.01. If that is done, the defendant must first have the opportunity to consult with an attorney. If the guilty plea is to a designated gross misdemeanor prosecuted by tab charge, a complaint must be filed before the court accepts the guilty plea. See Rule 4.02, subd. 5(3), and the comments to that rule. See also Rule 5.04, subd. 1(4), concerning waiver of the right to counsel. Rule 5.03(i) does not permit a defendant to enter a plea of not guilty to a gross misdemeanor at the first appearance under Rule 5. Rather, in accordance with Rules 8.01 and 11.10, a not-guilty plea in felony and gross misdemeanor cases is not entered until the Omnibus Hearing or later.

Minnesota law requires that a waiver of counsel be in writing unless the defendant refuses to sign the written waiver form. In that case, a record of the waiver is permitted. Minn. Stat. §611.19. In practice, a Petition to Proceed As Pro Se Counsel may fulfill the dual requirements of providing the defendant with the information necessary to make a voluntary and intelligent waiver of the right to counsel as well as providing a written waiver. See Form 11. Also see

~~*requirement does not apply.*~~

~~*In misdemeanor cases this statement as to a defendant's rights may be combined with the questioning required under Rule 15.02 prior to acceptance of a guilty plea. In order to save time and avoid repetition, the judge or judicial officer may advise a number of defendants at the same time of these rights, but the statement must be recorded and each defendant upon approaching the court must be asked on the record whether the defendant has heard and understood the rights explained earlier.*~~

The warning under Rule 5.03 as to the defendant's right to counsel continues the requirement~~s~~ of Minn. Stat. §~~§~~ 611.15~~ and 630.10 (1971)~~. ~~(~~See St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972), recognizing that misdemeanors authorizing a sentence of incarceration are criminal offenses and criminal procedures must be followed.~~)~~

~~*Pursuant*~~*Under* ~~*to*~~ *Rule~~s~~ ~~5.01(g)~~5.03(i) and 5.07, a defendant may plead guilty to a gross misdemeanor at the first appearance under Rule 5 in accordance with the guilty plea provisions of Rule 15.01. If that is done, the defendant must first have the opportunity to consult with an attorney. If the guilty plea is to a designated gross misdemeanor prosecuted by tab charge, ~~it is necessary that~~ a complaint ~~be made, served, and~~must be filed before the court accepts the guilty plea. See Rule 4.02, subd. 5(3), and the comments to that rule. See also Rule ~~5.02~~5.04, subd. 1(4), concerning waiver of the right to counsel. Rule ~~5.01(g)~~5.03(i) does not permit a defendant to enter a plea of not guilty to a gross misdemeanor at the first appearance under Rule 5. Rather, in accordance with Rules 8.01 and 11.10, a not guilty plea in felony and gross misdemeanor cases is not entered until the Omnibus Hearing or later.*

~~*Rule 5.02 governs the appointment of the public defender for indigent defendants (See ABA Standards, Pre-Trial Release, 4.2 (Approved Draft, 1968).)*~~

~~*The prior rule reflected a policy decision that all indigent defendants charged with felony or gross misdemeanor offenses would have counsel appointed for them. While the prior rule did not reflect the right*~~

Appendix C to Rule 15 for the Petition to Enter Plea of Guilty by Pro Se Defendant.

The decision in Faretta v. California, 422 U.S. 806 (1975), held that counsel may be appointed over the defendant's objection, to assist and consult if requested to do so by the defendant. Rule 5.04 establishes standards for appointing advisory counsel in cases where the defendant waives counsel and the court believes it is appropriate to appoint advisory counsel.

In most cases, the primary role of counsel appointed over the defendant's objection will be advisory. In fewer cases, the role of appointed counsel may be to take over representation of the defendant during trial. The term "standby counsel" is too broad a term to cover the role of appointed counsel in every case or even most cases where counsel is appointed over the objection of the defendant. Because the primary purpose of counsel appointed over the objection of the defendant is to help the accused understand and negotiate through the basic procedures of the trial and "to relieve the trial judge of the need to explain and enforce basic rules of [the] courtroom," counsel appointed over the objection of the accused may be more properly called "advisory counsel."

Two main reasons exist for appointing advisory counsel for defendants who wish to represent themselves: (1) the fairness of a criminal process where lay people choose to represent themselves--to aid the court in fulfilling its responsibility for insuring a fair trial, to further the public interest in an orderly, rational trial, or if the court appoints advisory counsel to assist the pro se defendant--and (2) the disruption of the criminal process before its completion caused by the removal of an unruly defendant or a request for counsel during a long or complicated trial.

These general reasons for the appointment of counsel to the pro se defendant suggest a natural expectation of the level of readiness of advisory counsel. If the court appoints advisory counsel as a safeguard to the fairness of the proceeding, it would not be expected that counsel would be asked to take over the representation of the defendant during the

~~*of the defendant to waive counsel in felony and gross misdemeanor cases, the comments to the rule did acknowledge the right of defendants to represent themselves. Faretta v. California, 422 U.S. 806 (1975). The current rule includes language which makes this right clear. The decision in Faretta v. California found that it was permissible for the state to appoint counsel over the defendant's objection, to assist and consult if requested to do so by the defendant. The revised rule also sets forth standards for appointing "advisory counsel" in cases where the defendant waives counsel and the court believes it is appropriate to appoint "advisory counsel".*~~	*trial and counsel should not be expected and need not be prepared to take over representation should this be requested or become necessary. If this unexpected event occurred and a short recess of the proceeding would be sufficient to allow counsel to take over representation, the court could enter that order. If the circumstances constituted a manifest injustice to continue with the trial, a mistrial could be granted and a date for a new trial, allowing counsel time to prepare, could be set. The court could also deny the request to allow counsel to take over representation if the circumstances would not make this feasible or practical.*
~~*This rule contains the requirement that the court advise defendants appearing without counsel of their right to counsel, Minn. Stat. § 611.15, and the right "at any time" to request the appointment of the public defender. Minn. Stat. §611.16.*~~	*If the court appoints advisory counsel because of the complexity of the case or the length of the trial or the possibility that the defendant may be removed from the trial because of disruptive behavior, advisory counsel must be expected to be prepared to take over as counsel in the middle of the trial so long as the interests of justice are served.*
~~*Faretta v. California recognized the constitutional right of the accused in a criminal proceeding to voluntarily and intelligently waive the right to counsel and represent himself or herself. In ensuring a voluntary and intelligent waiver, the court must warn the defendant of the "dangers and disadvantages of self-representation." The rule provides that when a defendant wishes to waive the right to counsel, the court must ensure that the defendant makes a voluntary and intelligent waiver of counsel by conducting a penetrating and comprehensive examination of the defendant's understanding of the factors involved in this decision. The provision sets forth a minimum list of the factors to be considered. See Von Moltke v. Gillies, 332 U.S. 708 (1948).*~~	*Whenever counsel is appointed over the defendant's objection, counsel's participation must not be allowed to destroy the jury's perception that the accused is representing himself or herself. In all proceedings, especially those before the jury, advisory counsel must respect the defendant's right to control the case and not interfere with it. The accused must authorize appointed counsel before the counsel can be involved, render impromptu advice, or ever appear before the court. If the accused does not wish appointed counsel to participate, counsel must simply attend the trial.*
~~*Another way for the court to assure itself that the waiver of counsel is voluntary and intelligent is to appoint temporary counsel to advise and consult with the defendant as to the waiver. This is in accord with ABA Standards, Providing Defense Services, 5-7.3 (1980).*~~	*Even where appointed counsel is not expected to be ready to take over representation in the middle of the proceedings, it is appropriate and necessary that all advisory counsel be served with the same disclosure and discovery items as counsel of record so that counsel can at least be familiar with this information in acting in an advisory role. All counsel appointed for the pro se defendant must be served with the pleadings, motions, and discovery.*
Minnesota law requires that a waiver of counsel be in writing unless the defendant refuses to sign the written waiver form. In that case a record of the waiver is permitted. Minn. Stat. §611.19. In practice,	*It is essential that at the outset the trial court explain to the accused and counsel appointed in these situations what choices the accused has and what the consequences of those choices may be later*

a Petition to Proceed As Pro Se Counsel may fulfill the dual requirements of providing the defendant with the information necessary to make a voluntary and intelligent waiver of the right to counsel as well as providing a written waiver. See Form 11. Also see Appendix C to Rule 15 for the Petition to Enter Plea of Guilty by Pro Se Defendant.

~~*Faretta v. California also recognized that a state may, over the objection of the accused, appoint what has been called "standby counsel" to aid the accused if and when the accused requests help and to be available to represent the accused in the event termination of the defendant's self-representation is necessary because the defendant "deliberately engages in serious and obstructionist misconduct."*~~

The decision in Faretta v. California, 422 U.S. 806 (1975) held that counsel may be appointed over the defendant's objection, to assist and consult if requested to do so by the defendant. Rule 5.04 establishes standards for appointing advisory counsel in cases where the defendant waives counsel and the court believes it is appropriate to appoint advisory counsel.

In most cases, the primary role of counsel appointed over the defendant's objection~~ of the accused is fundamentally~~ will be advisory. In fewer cases, the role of appointed counsel may be to take over representation of the defendant during trial.~~ either because of a request of the defendant because of the length or complexity of the trial, or because the defendant's disruptive behavior constituted a waiver of the right of self-representation. While Faretta refers to counsel taking representation upon termination of the right of self-representation, in most cases this is not the primary role of such counsel and may not be either feasible or desirable. The absolute control over the defense placed in the hands of the accused by Faretta may prevent appointed advisory counsel from being able to be ready to step in and continue the trial if the defendant is unable or unwilling to continue to represent himself or herself. The accused, not appointed counsel, controls the plan or lack of plan for the presentation of the defense.~~ The term "standby counsel" is too broad a term to cover the role of appointed counsel in every case or even most in the proceedings. In State v. Richards, 552 N.W.2d 197, 206 (Minn. 1996), the Supreme Court repeated the rule it set in State v. Richards, 463 N.W.2d 499 (Minn. 1990): the defendant's request for the "substitution of standby counsel [shall not be granted] unless, in the trial court's discretion, his request is timely and reasonable and reflects extraordinary circumstances." Trial courts should consider the progress of the trial, the readiness of standby counsel, and the possible disruption of the proceedings. Statement of the expectations of advisory counsel at the outset should make it clear to all concerned about what will happen should there be a change in the representation of the defendant during the proceeding.

A defendant appearing pro se with advisory counsel should be informed that the duties and costs of investigation, legal research, and other matters associated with litigating a criminal matter are the responsibility of the defendant and not advisory counsel. It should be made clear to the pro se defendant that advisory counsel is not a functionary of the defendant who can be directed to perform tasks by the defendant. A motion under Minn. Stat. § 611.21 is available to seek funds for hiring investigators and expert witnesses.

In certain circumstances, a separate appearance to fulfill the requirements of Rule 8 may serve very little purpose. Originally these rules required the appearance under Rule 5 to be in the county court and the appearance under Rule 8 to be in the district court. Now, both appearances are held in the district court. The additional time and judicial resources invested in a separate appearance under Rule 8 may yield little or no benefit. Therefore, Rule 5.05 permits the appearances required by Rule 5 and Rule 8 to be consolidated upon request of the defendant.

When the appearances are consolidated under Rule 5.05, all of the provisions in Rule 8 are applied to the consolidated hearing. This means that under Rule 8.04 the Omnibus Hearing provided for by Rule 11 must be scheduled for a date no later than 28 days after the consolidated hearing. This requirement is subject, however, to the power of the court under Rule 8.04(c) to extend the time for good cause related to the particular case upon motion of the

cases where counsel is appointed over the objection of the defendant. Because the primary purpose of counsel appointed over the objection of the defendant is to help the accused understand and negotiate through the basic procedures of the trial and "to relieve the trial judge of the need to explain and enforce basic rules of [the] courtroom," counsel appointed over the objection of the accused may be more properly called "advisory counsel". *~~There appear to be two~~Two main reasons exist for appointing advisory counsel for defendants who wish to represent themselves: (1) ~~the many concerns surrounding~~ the fairness of a criminal process where lay people choose to represent themselves--to aid the court in fulfilling its responsibility for insuring a fair trial, to further the public interest in an orderly, rational trial, or if the court appoints advisory counsel to assist the pro se defendant--and (2) ~~the concerns over~~ the disruption of the criminal process ~~prior to~~before its completion caused by the removal of an unruly defendant or a request for counsel during a long or complicated trial.* *These general reasons for the appointment of counsel to the pro se defendant suggest a natural expectation of the level of readiness of advisory counsel. If the court appoints advisory counsel as a safeguard to the fairness of the proceeding, it would not be expected that counsel would be asked to take over the representation of the defendant during the trial and counsel should not be expected and need not be prepared to take over representation should this be requested or become necessary. If this unexpected event occurred and a short recess of the proceeding ~~were~~would be sufficient to allow counsel to take over representation, the court could enter that order. If the circumstances constituted a manifest injustice to continue with the trial, a mistrial could be granted and a date for a new trial, allowing counsel time to prepare, could be set. The court could also deny the request to allow counsel to take over representation if the circumstances would not make this feasible or practical.* *If the court appoints advisory counsel because of the complexity of the case or the length of the trial or the possibility that the defendant may be removed from the trial because of disruptive behavior, defendant or the prosecution or upon the court's initiative. Also, the notice of evidence and identification procedures required by Rule 7.01 must be given at or before the consolidated hearing.* *Under Rule 5.04, subd. 4 if the defendant pleads not guilty in a misdemeanor case and the prosecution has given the notice of evidence and identification prescribed by Rule 7.01, then both the defendant and the prosecution shall either waive or demand a Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) hearing. The waiver or demand is necessary only in cases where a jury trial is to be held since the notice is not required under Rule 7.01 if no jury trial is to be held in a misdemeanor case.*	

advisory counsel must be expected to be prepared to take over as counsel in the middle of the trial so long as the interests of justice are served. *Whenever counsel is appointed over the defendant's objection, counsel's participation must not be allowed to destroy the jury's perception that the accused is representing himself or herself. In all proceedings, especially those before the jury, advisory counsel must respect the defendant's right to control the case and not interfere with it. The accused must authorize appointed counsel before the counsel can be involved, render impromptu advice, or ever appear before the court. If the accused does not wish appointed counsel to participate, counsel must simply attend the trial.* *Even where appointed counsel is not expected to be ready to take over representation in the middle of the proceedings, it is appropriate and necessary that all advisory counsel be served with the same disclosure and discovery items as counsel of record so that counsel can at least be familiar with this information in acting in an advisory role. All counsel appointed for the pro se defendant must be served with the pleadings, motions, and discovery.* *It is essential that at the outset the trial court explain to the accused and counsel appointed in these situations what choices the accused has and what the consequences of those choices may be later in the proceedings. In State v. Richards, 552 N.W.2d 197, 206 (Minn. 1996), the Supreme Court repeated the rule it set in State v. Richards, 463 N.W.2d 499 (Minn. 1990): the defendant's request for the "substitution of standby counsel (shall not be granted) unless, in the trial court's discretion, his request is timely and reasonable and reflects extraordinary circumstances." Trial courts should consider the progress of the trial, the readiness of standby counsel, and the possible disruption of the proceedings. Statement of the expectations of advisory counsel at the outset should make it clear to all concerned about what will happen should there be a change in the representation of the defendant during the proceeding.* *A defendant appearing pro se with advisory counsel should be informed that the duties and costs*	

of investigation, legal research, and other matters associated with litigating a criminal matter are the responsibility of the defendant and not advisory counsel. It should be made clear to the pro se defendant that advisory counsel is not a functionary of the defendant who can be directed to perform tasks by the defendant. A motion pursuant to Minn. Stat. § 611.21 is available to seek funds for hiring investigators and expert witnesses. ~~*Rule 5.02, subd. 3 prescribes the standard to be applied by the court in determining whether a defendant is financially eligible for the appointment of the public defender. This standard is based upon the standards adopted by the Minnesota Legislature effective July 1, 2003, in Minn. Stat. § 611.27 (Supp. 2003) except that the statute expressly prohibits the appointment of the public defender as advisory counsel. This rule also recognizes the limited resources of district public defenders.*~~ ~~*Under part (1), the defendant is eligible for public defender representation if they receive a means-tested government benefit or if they have a dependent who resides in their household and who receives such benefits. A means-tested benefit is one based upon an income and/or assets test.*~~ ~~*Under part (2), the defendant is eligible for public defender representation if their income and/or assets are insufficient for them to pay the reasonable costs of private representation in that judicial district for a case of the nature at issue.*~~ ~~*It is strongly recommended that the district court maintain a list of attorneys who wish to have cases referred to them and who are willing to try to make financial arrangements with defendants to permit them to accept representation. A number of organizations, including the Hennepin and Ramsey County Bar Associations and the Minnesota Association of Criminal Defense Lawyers, maintain lists of private attorneys who will accept criminal defense cases at a fee rate which will be determined after consideration of the defendant's ability to pay. The existence of such a referral list may not, however, be a basis for failing to appoint counsel for a defendant who is financially eligible for public defender representation under Parts (1) or (2) of this*~~	

~~*rule.*~~ ~~*To assist the court in deciding whether to appoint the public defender, Rule 5.02, subd. 4 provides that whenever possible a financial inquiry should be conducted before the defendant's appearance in court. Such an inquiry may be combined with the pre-release investigation provided for in Rule 6.02, subd. 3. The rule also emphasizes the court's obligation to jealously guard the resources of district public defense and outlines the extent to which the court must go to determine district public defense eligibility in accordance with In re Stuart, 646 N.W.2d 520 (Minn. 2002). In order to avoid the creation of conflicts of interest and to focus limited public defender resources on client representation, the public defender shall not be permitted or required to participate in determining whether particular defendants are eligible for public defender representation.*~~ ~~*Rule 5.02, subd. 5 provides that the ability of a defendant to pay part of the cost of adequate representation when charges are pending shall not preclude the court from appointing the public defender. This provision is included to make clear that the public defender can be appointed for the person of moderate means who would be subject to substantial financial hardship if forced to pay the full cost of adequate representation. In such circumstances the court may require the defendant to the extent able to compensate the governmental unit charged with paying the expense of the appointed public defender.*~~ ~~*Rule 5.02, subd. 5 is in accord with ABA Standards, Providing Defense Services, 6.3 (Approved Draft, 1968) and with Minn. Stat. §611.20.*~~ ~~*Under Rule 5.03, if the defendant is charged with a felony or gross misdemeanor, a date shall be fixed by the judge or judicial officer for the defendant's appearance in the district court under Rule 8, where the defendant will be arraigned upon the complaint or, where permitted, the tab charge (Rules 8.01, 12), and if a guilty plea is not entered, a date will be fixed by the district court (Rule 8.04) for the Omnibus Hearing provided for by Rule 11.*~~	

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

In certain circumstances a separate appearance to fulfill the requirements of Rule 8 may serve very little purpose. Originally these rules required the appearance under Rule 5 to be in the county court and the appearance under Rule 8 to be in the district court. Now, both appearances are held in the district court. The additional time and judicial resources invested in a separate appearance under Rule 8 may yield little or no benefit. Therefore, Rule 5.03 permits the appearances required by Rule 5 and Rule 8 to be consolidated upon request of the defendant.

When the appearances are consolidated under Rule 5.03, all of the provisions in Rule 8 are applied to the consolidated hearing. This means that under Rule 8.04 the Omnibus Hearing provided for by Rule 11 must be scheduled for a date not later than 28 days after the consolidated hearing. This requirement is subject however to the power of the court under Rule 8.04(c) to extend the time for good cause related to the particular case upon motion of the defendant or the prosecution or upon the court's initiative. Also, the notice of evidence and identification procedures required by Rule 7.01 must be given at or before the consolidated hearing.

~~*By Rule 5.04, after a complaint has been issued or a tab charge entered on the record as authorized under Rule 4.02, subd. 5(3), the defendant shall be arraigned in open court under Rule 5.04 or may be given time to plead. This is in accord with Minn. Stat. § 630.13 (1971). The defendant has an absolute right to appear by counsel to enter a plea of not guilty and set a trial date.*~~

~~*To the extent Minn. Stat. § 630.01 (1971) might require the permission of the court to make such an appearance by counsel, it is superseded. See also*~~

Rule 14.02, subd. 2 (plea of guilty by counsel); Rule 15.03, subd. 2 (petition to plead guilty); Rule 26.03, subd. 1(3) (defendant's presence at trial and sentencing); and Rule 27.03, subd. 2 (defendant's presence at sentencing). The requirement that the arraignment be conducted in open court is taken from F.R.Crim.P. 10 and follows Minn. Stat. § 630.01 (1971). The appearance of a corporation by counsel or an officer continues present Minnesota practice under Minn. Stat. § 630.16 (1971). *If the defendant pleads guilty in a misdemeanor case the procedure prescribed by Rule 15 shall be followed and thereafter the pre-sentencing and sentencing procedures provided by these rules shall be followed.* *Following a plea of guilty a defendant or defense counsel under Rule 5.04, subd. 2 may request permission for the defendant to enter a plea of guilty to any other misdemeanor committed within the state which is under the jurisdiction of another court. The procedure for entering such pleas is set forth in Rule 15.10. Also see the comments on that rule. If the defendant has permission to enter the plea from the prosecuting attorney of the governmental unit authorized to prosecute the offense, then the court may accept the plea provided it is otherwise proper. Before accepting the plea, the defendant must be charged with the offense, but that could be done simply by a tab charge pursuant to Rule 4.02, subd. 5(3). By entering a plea under Rule 5.04, subd. 2 the defendant waives any right to object to the venue of the court which is accepting the plea. Following acceptance of the plea, the court has the power to sentence the defendant just as if it originally had jurisdiction over the offense. This rule was originally taken from ABA Standards, Pleas of Guilty, 1.2 (Approved Draft, 1968) and permits a defendant to dispose of a number of charges pending against the defendant throughout the state without the necessity and expense of being taken to each court personally while in custody. If any fines are collected upon entry of a guilty plea to an offense arising in another jurisdiction, the money is to be forwarded to the clerk of the court which originally had jurisdiction over the offense. Disbursement of such fines by the clerk of the court of original jurisdiction shall be as if the plea had actually been*	

~~*entered and the fine collected in the court of original jurisdiction. As to disbursement of such fines see Minn. Stat. §§ 487.31 and 487.33, subds. 1 and 5 (County Courts); 488A.03, subd. 6(a) and (d) and 488A.03, subd. 11(d) (Hennepin County Municipal Court); and 488A.20, subd. 4 (Ramsey County Municipal Court).*~~

~~*A defendant pleading not guilty who is entitled to a jury trial shall be asked under Rule 5.04, subd. 3 to exercise or waive that right. The defendant with the approval of the court has an absolute right to waive a jury trial under Rules 5.04, subd. 3 and 26.01, subd. 1(2)(a) in a misdemeanor case. A prosecutor who objects to the judge selected to try the case may file a notice to remove the judge. Rule 26.03, subd. 13; State v. Kraska, 294 Minn. 540, 201 N.W.2d 742 (1972). See also Rule 26.01, subd. 1(2)(b) as to waiver of jury trial when there is prejudicial publicity and Rule 26.01, subd. 1(3) as to withdrawal of the waiver. Rule 5.04, subd. 3 permits a defendant to waive a jury trial either in writing or orally in open court on the record. This is contrary to Minn. Stat.§ 631.01 which permitted only a written waiver. See Rule 26.01(1) as to a misdemeanor defendant's right to a jury trial and Rule 6.06 as to the time within which a trial must be held on a misdemeanor charge.*~~

Under Rule 5.04, subd. 4 if the defendant pleads not guilty in a misdemeanor case and the prosecution has given the notice of evidence and identification prescribed by Rule 7.01, then both the defendant and the prosecution shall either waive or demand a Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) hearing. The waiver or demand is necessary only in cases where a jury trial is to be held since the notice is not required under Rule 7.01 if no jury trial is to be held in a misdemeanor case. ~~*Under Rule 7.01 the notice must be given at least 7 days before trial or by the conclusion of the pretrial conference if held. The waiver or demand shall be made at the first court appearance after notice is given and if given during a court appearance the waiver or demand should be made at that appearance. If no court appearance intervenes between the giving of notice and the trial, then waiver or demand shall be made immediately before trial. The waiver or demand of a hearing may*~~

~~*be made either in writing or orally on the record. See Rule 12.04, subd. 3 as to the time of any evidentiary hearing demanded.*~~ ~~*Rule 5.04, subd. 5 abolishes special appearances in misdemeanor cases. The purpose of such an appearance in the past has been to avoid waiver of a challenge to the personal jurisdiction of the court. Rules 10.02 and 17.06, subd. 4(1), however, reverse prior case law and provide a procedure for challenging the personal jurisdiction of the court after a complaint has been issued and a not guilty plea entered. See the Comments to Rule 10.02 as to this procedure.*~~ ~~*By Rule 5.05 the judge or judicial officer shall set the conditions for the defendant's release under Rule 6.02. Under Rule 5.06 minutes of the proceedings at an arraignment or first appearance in court must be kept unless the judge or judicial officer directs that a verbatim record shall be made. The method of taking the minutes is within the discretion of the court. Where a guilty plea is entered to a misdemeanor offense punishable by incarceration, however, Rules 13.05 and 15.03 require either that a verbatim record be made or a petition to plead guilty be filed. This requirement is prescribed in light of State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973) where the court applied the holding of Boykin v. Alabama, 395 U.S. 238 (1969) to misdemeanor cases saying, "A guilty plea must appear on the record to have been voluntarily and intelligently made. If not, the plea must be vacated."*~~ ~~*From the time of the defendant's initial appearance in court under Rule 5 until the Omnibus Hearing (Rule 11), the following schedule of events shall take place in felony and gross misdemeanor cases in which the appearances under Rule 5 and Rule 8 have not been consolidated pursuant to Rule 5.03:*~~ ~~*1. Defendant's Initial Appearance before the court under Rule 5.*~~ ~~*2. Service of Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) notice (Rule 7.01) on the defendant on or before the date of the appearance in the district court under Rule 8.*~~	

~~*3. Appearance in the district court under Rule 8 (within 14 days after the initial appearance under Rule 5 unless the appearances under Rules 5 and 8 are consolidated pursuant to Rule 5.03).*~~ ~~*4. Service of Spreigl (State v. Spreigl, 272 Minn. 488, 139 N.W.2d 167 (1965)), State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967) notice on the defendant (Rule 7.02) on or before the date of the Omnibus Hearing (Rule 11).*~~ ~~*5. Completion of discovery required of prosecution and defendant without order of court (Rules 9.01, subd. 1; 9.02, subd. 1) before the Omnibus Hearing (Rule 7.03).*~~ ~~*6. Service of pretrial motions (Rules 10, 9.01, subd. 2; 9.02, subd. 2; 9.03, subd. 3; 18.02, subd. 2; 17.03, subd. 3 and subd. 4; 17.06; 20.01, subd. 2; 20.03, subd. 1) to be heard at the Omnibus Hearing (3 days before the Omnibus Hearing (Rule 10.04, subd. 1).)*~~ ~~*7. Omnibus Hearing under Rule 11 within 28 days after defendant's appearance in the district court under Rule 8 and within 42 days after defendant's initial appearance under Rule 5 when the Rule 5 and Rule 8 appearances are not consolidated.*~~ ~~*From the time of the defendant's initial appearance in court until the trial, the following schedule of events shall take place in misdemeanor cases:*~~ ~~*1. Defendant's initial appearance (Rule 5).*~~ ~~*2. Arraignment (Rule 5).*~~ ~~*3. Notice of challenge to jurisdiction of the court following issuance of complaint and entry of not guilty plea. Notice must be given within 7 days after entry of not guilty plea (Rule 10.02).*~~ ~~*4. Service of Rasmussen notice (Rule 7.01) on or before the pretrial conference if held under Rule 12.01, or seven days before trial if no such conference is held.*~~ ~~*5. Waiver or demand of Rasmussen hearing by prosecution and defendant at first court appearance following service of the Rasmussen notice (Rule 5.04, subd. 6).*~~ ~~*6. Service of Spreigl (State v. Spreigl, 272 Minn. 488, 139 N.W.2d 167 (1965), State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967)) notice on the defendant (Rule 7.02) on or before the date of the pretrial conference (Rule 5.04, subd. 6) if held or at*	

~~*least seven days before trial if no such conference is held.*~~ ~~*7. Service of pretrial motions (Rules 10; 17.03, subds. 3 and 4; 17.06; 17.06, subd. 3 and motions to suspend criminal proceedings for mental incompetency and motions to disclose medical reports under Rule 20.04) at least three days before the pretrial conference or three days before trial if no pretrial conference is held, but no more than 30 days after the arraignment unless the court extends the time for good cause (Rule 10.04).*~~ ~~*8. Pretrial conference may be held at such time as the court may order (Rule 12.01).*~~ ~~*9. Pretrial motions heard at pretrial conference or just before trial if no such conference is held (Rule 10.04, subd. 2).*~~ ~~*10. Discovery may be conducted at any time before trial as permitted by Rule 7.03.*~~ ~~*11. Rasmussen hearing held immediately prior to jury trial unless otherwise ordered by the court for good cause and upon a trial to the court the hearing may be held as part of the trial (Rule 12.04, subd. 3).*~~ ~~*12. Trial to be held within 60 days from the date of demand or within 10 days of demand if the defendant is in custody.*~~	

Proposed Revisions to Minn. R. Crim. P. 6

Original Language Showing Markup	Proposed Revised Language
Rule 6. Pretrial Release	**Rule 6. Pretrial Release**
Rule 6.01 Release on Citation ~~by Law Enforcement Officer Acting Without Warrant~~	**Rule 6.01 Release on Citation**
Subd. 1. Mandatory Citation Issuance ~~of Citation~~ in Misdemeanor Cases.	Subd. 1. Mandatory Citation Issuance in Misdemeanor Cases.
~~(1) For Misdemeanors.~~ (a) By Arresting Officer~~s~~. ~~Law enforcement~~In misdemeanor cases, peace officers ~~acting~~who decide to proceed with prosecution and who act without a warrant~~, who have decided to proceed with prosecution, shall~~ must issue a citation~~s to persons subject to lawful arrest for misdemeanors,~~ and release the defendant unless it reasonably appears:	(a) By Arresting Officer. In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:
(1) ~~to the officer that arrest or detention is necessary~~the person must be detained to prevent bodily ~~harm~~ injury to ~~the accused~~that person or another;	(1) the person must be detained to prevent bodily injury to that person or another;
(2) ~~or~~ further criminal conduct will occur~~;~~; or	(2) further criminal conduct will occur; or
(3) ~~that there is~~ a substantial likelihood exists that the ~~accused~~person will ~~fail to~~not respond to a citation. ~~The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.~~	(3) a substantial likelihood exists that the person will not respond to a citation. If the officer has already arrested the person, a citation must issue in lieu of continued detention, and the person must be released, unless any of the circumstances in subd. 1(a)(1)-(3) above exist.
If the officer has already arrested the person, a citation must issue in lieu of continued detention, and the person must be released, unless any of the circumstances in subd. 1(a)(1)-(3) above exist.	
(b) At Place of Detention. When an officer brings a person arrested without a warrant for a misdemeanor ~~or misdemeanors, is brought~~ to a police station or county jail, the officer in charge of the police station, ~~or the county~~ sheriff in charge of the jail, or ~~an~~ officer designated by the sheriff ~~shall~~must issue a citation in lieu of continued detention unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist~~detention is necessary to prevent bodily harm to the accused or another or further~~	(b) At Place of Detention. When an officer brings a person arrested without a warrant for a misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff must issue a citation in lieu of continued detention unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist.

~~criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued~~.	
(~~2~~c) ~~For Misdemeanors, Gross Misdemeanors and Felonies When Ordered by Prosecuting Attorney or Judge. An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue~~ Offenses Not Punishable by Incarceration. A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention~~. if so ordered by the prosecuting attorney or by the judge of a district court or by any person designated by the court to perform that function.~~	(c) Offenses Not Punishable by Incarceration. A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention.
(d) Reporting Requirements. If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.	(d) Reporting Requirements. If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.
Subd. 2. Permissive Authority to Issue Citations in~~for~~ Gross Misdemeanor~~s~~ and ~~Felonies~~Felony Cases at Place of Detention.	Subd. 2. Permissive Authority to Issue Citations in Gross Misdemeanor and Felony Cases at Place of Detention.
When an ~~law enforcement~~ officer ~~acting without a warrant is entitled to make an arrest for a felony or gross misdemeanor or~~brings a person arrested without a warrant for a felony or gross misdemeanor ~~is brought~~ to a police station or county jail, the officer in charge of the police station~~, or the county~~ sheriff in charge of the jail, or ~~an~~ officer designated by the sheriff may issue a citation ~~in~~ and release the defendant ~~lieu of arrest or in lieu of continued detention if an arrest has been made,~~ unless it reasonably appears to the officer that ~~arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that the accused may fail to appear in response to the citation~~any of the circumstances in subd. 1(a)(1)-(3) exist.	When an officer brings a person arrested without a warrant for a felony or gross misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff may issue a citation and release the defendant unless it reasonably appears to the officer that any of the circumstances in subd. 1(a)(1)-(3) exist.
Subd. 3. Mandatory Release on Citation When Ordered by Prosecutor or Court.	Subd. 3. Mandatory Release on Citation When Ordered by Prosecutor or Court.

In felony, gross misdemeanor, and misdemeanor cases, a person arrested without a warrant must be issued a citation and released if so ordered by the prosecutor or by the district court, or by any person designated by the court to perform that function.	In felony, gross misdemeanor, and misdemeanor cases, a person arrested without a warrant must be issued a citation and released if so ordered by the prosecutor or by the district court, or by any person designated by the court to perform that function.
Subd. ~~3~~4. Form of Citation. The~~A~~ citation must~~shall~~ direct the ~~accused~~defendant to appear ~~before~~ at a designated ~~court or violations bureau at a specified~~ time and place ~~or to contact the court or violations bureau to schedule an appearance~~. In any county with a violations bureau, the citation may direct the defendant to appear at that bureau or direct the defendant to contact the bureau to schedule an appearance. The citation ~~shall~~must state that ~~if the defendant fails~~failure to appear ~~at~~ or contact the ~~court or~~ violations bureau as directed ~~in response to the citation,~~ may result in the issuance of a warrant ~~of arrest may issue~~. A summons or warrant issued ~~because of a defendant's~~after failure to respond to a citation may be based ~~up~~on sworn facts establishing probable cause ~~as set forth~~contained in or with the citation and attached to the complaint.	Subd. 4. Form of Citation. The citation must direct the defendant to appear at a designated time and place. In any county with a violations bureau, the citation may direct the defendant to appear at that bureau or direct the defendant to contact the bureau to schedule an appearance. The citation must state that failure to appear or contact the violations bureau as directed may result in the issuance of a warrant. A summons or warrant issued after failure to respond to a citation may be based on sworn facts establishing probable cause contained in or with the citation and attached to the complaint.
Subd. ~~4~~5. Lawful Searches. The issuance of a citation does not affect an ~~law enforcement~~ officer's authority to conduct an otherwise lawful search.	Subd. 5. Lawful Searches. The issuance of a citation does not affect an officer's authority to conduct an otherwise lawful search.
Subd. ~~5~~6. Persons in Need of Care. ~~Notwithstanding the issuance of a citation, a law enforcement~~ Even if a citation has been issued, an officer ~~may~~ can take the ~~cited~~ person cited to an appropriate medical or mental health facility if that person appears mentally or physically incapable of self care.	Subd. 6. Persons in Need of Care. Even if a citation has been issued, an officer can take the person cited to an appropriate medical or mental health facility if that person appears mentally or physically incapable of self care.
Rule 6.02 Release by ~~Judge~~Court~~, Judicial Officer~~ or ~~Court~~Prosecutor	**Rule 6.02 Release by Court or Prosecutor**
Subd. 1. Conditions of Release. A~~ny~~ person charged with an offense ~~shall~~must be released without bail ~~pending the first court appearance~~ when ordered by the prosecutor, ~~prosecuting attorney, the judge~~court ~~of a district court~~, or ~~by~~ any person designated by the court to perform that function. On~~Upon~~ appearance before ~~a judge,~~	Subd. 1. Conditions of Release. A person charged with an offense must be released without bail when ordered by the prosecutor, court, or any person designated by the court to perform that function. On appearance before the court, a person must be released on personal recognizance or an unsecured appearance bond unless a court

judicial officer, or courtthe court, a person so charged shallmust be ordered released pending trial or hearing on personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless a the court, judge court or judicial officer determines, in the exercise of discretion, that such a release will be inimical of endanger the public safety or will not reasonably assure the appearance of the defendant's appearanceperson as required. When such athis determination is made, the court, judge or judicial officer shall must, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release whichthat will reasonably assure the person's appearance as orderedof the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:	determines that release will endanger the public safety or will not reasonably assure the defendant's appearance. When this determination is made, the court must, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release that will reasonably assure the person's appearance as ordered, or, if no single condition gives that assurance, any combination of the following conditions:
(a) Place the defendant under person in the care and supervision of a designated person who, or organization that, agrees to supervise;agreeing to supervise the person;	(a) Place the defendant under the supervision of a person who, or organization that, agrees to supervise;
(b) Place restrictions on the travel, association, or place of aboderesidence during the period of release;	(b) Place restrictions on travel, association, or residence during release;
(c) Require the execution of an appearance bond in an amount set by the court with sufficient solvent sureties, or the deposit of cash deposit, or other sufficient security in lieu thereof; or	(c) Require an appearance bond, cash deposit, or other security; or
(d) Impose any other conditions deemed reasonably necessary to assure appearance as ordered.required, including a condition requiring that the person return to custody after specified hours.	(d) Impose other conditions necessary to assure appearance as ordered.
If the court sets such conditions of release, aside from an appearance bond, are imposed by the court, the court shall it must issue a written order containing those them conditions of release. A copy of the order of any such order shall must be provided to the defendant and immediately to the law enforcement agency that has or had custody of the defendant. TheSuch law enforcement agency shall must also be provided by the court with the victim's name and location any available information on the location of the named victim.	If the court sets conditions of release, it must issue a written order containing them. A copy of the order must be provided to the defendant and to the law enforcement agency that has or had custody. The law enforcement agency must also be provided with the victim's name and location.
	The court must set money bail without other conditions on which the defendant may be released by posting cash or sureties.
In any event, theThe court shall also fix the	The defendant's release must be conditioned on appearance at all future court proceedings.

~~amount of money~~ must set money bail without other conditions ~~up~~on which the defendant may be~~obtain~~ released ~~either~~ by posting cash or ~~by sufficient~~ sureties. The defendant's release ~~shall~~ must be conditioned on appearance at all future court proceedings~~trial or hearing, including the Omnibus Hearing, evidentiary hearing and the pretrial conference prescribed by these rules, or at the taking of any deposition that may be ordered by the court~~.	
Subd. 2. Release Conditions~~Determining Factors~~. In determining ~~which~~ conditions of release ~~will reasonably assure such appearance,~~ the ~~judge, judicial officer or court shall on the basis of available information, take into account~~ court must consider: • the nature and circumstances of the offense charged~~,~~; • the weight of the evidence ~~against the accused,~~; • ~~the accused's~~ family ties~~,~~; • employment~~,~~; • financial resources~~,~~; • character and mental condition~~,~~; • length of residence in the community~~,~~; • criminal ~~record of~~ convictions~~,~~; • ~~record of appearance at~~prior history of appearing in court~~,~~; • prior~~proceedings or~~ flight to avoid prosecution~~,~~; • ~~and~~ the victim's safety; • ~~of~~ any other person's safety ~~or of the community~~; • the community's safety.	Subd. 2. Release Conditions. In determining conditions of release the court must consider: • the nature and circumstances of the offense charged; • the weight of the evidence; • family ties; • employment; • financial resources; • character and mental condition; • length of residence in the community; • criminal convictions; • prior history of appearing in court; • prior flight to avoid prosecution; • the victim's safety; • any other person's safety; • the community's safety.
Subd. 3. Pre-Release Investigation. ~~In order to acquire the information required for determining the~~To determine conditions of release, the court may investigate ~~an investigation into~~ the defendant's~~accused's~~ background ~~may be made prior to~~before or at ~~contemporaneously with~~ the defendant's court appearance ~~before the court, judge or judicial officer~~. The investigation may be conducted by ~~court's~~ probation services or by any other qualified ~~facility available to~~agency as directed by the court ~~may be directed to conduct the investigation~~.	Subd. 3. Pre-Release Investigation. To determine conditions of release, the court may investigate the defendant's background before or at the defendant's court appearance. The investigation may be conducted by probation services or by any other qualified agency as directed by the court. Information obtained in the pre-release investigation from the defendant in response to an inquiry during the investigation and any derivative evidence must not be used against the defendant at trial. Evidence obtained by independent

Any informationInformation obtained in the pre-release investigation from the defendant in response to an inquiry during the course of the investigation and any derivative evidence derived from such information, shall must not be used against the defendant at trial. This shall not preclude the use of evidenceEvidence obtained by other independent investigation may be used.	investigation may be used.
Subd. 4. Review of Release Conditions of Release. Upon motion, theThe court mustbefore which the case is pending shall review the conditions of release on request of any party.	Subd. 4. Review of Release Conditions. The court must review conditions of release on request of any party.
Rule 6.03. Violation of Release Conditions of Release	**Rule 6.03. Violation of Release Conditions**
Subd. 1a. Authority to Apply for a Summons or Warrant. Upon an On application of the prosecuting attorneyby the prosecutor, court services, or probation officer alleging probable cause that a defendant has violated athe conditions of release condition, the court may issue a summons or warrant, using the procedure in paragraphs (a) and (b).	Subd. 1. Authority to Apply for a Summons or Warrant. On application by the prosecutor, court services, or probation officer alleging probable cause that defendant violated a release condition, the court may issue a summons or warrant, using the procedure in paragraphs (a) and (b).
(a) Summons. A summons must be issued instead of a warrant unless a warrant is authorized under paragraph (b). , the judge, judicial officer or court that released the defendant may issue a summons The summons must directing the defendant to appear in court and include a date and time for a hearingbefore 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.	(a) Summons. A summons must be issued instead of a warrant unless a warrant is authorized under paragraph (b). The summons must direct the defendant to appear in court and include a date and time for a hearing.
(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 The court may issue a warrant instead of a summons if it reasonably appears that there is a substantial likelihood exists 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 defendant's location of the defendant is not unknown. The warrant shall must direct that the defendant's be arrested and taken forthwithprompt appearance in before	(b) Warrant. The court may issue a warrant instead of a summons if a substantial likelihood exists that the defendant will fail to respond to a summons, that continued release of the defendant will endanger any person, or the defendant's location is not known. The warrant must direct the defendant's arrest and prompt appearance in court.

~~such judge, judicial officer or~~ court. Subd. 2. Arrest Without Warrant. ~~When a law enforcement~~A peace officer ~~has probable cause to believe that~~may arrest a released defendant if the officer has probable cause to believe a release condition has been 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~~The officer ~~may arrest the defendant and~~ must promptly take the defendant ~~forthwith~~ before a judge~~., judicial officer or court if it is impracticable to secure~~. When possible, a warrant should be obtained before making an arrest under this rule~~or summons as provided in this rule~~. 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 the defendant's possible~~ The defendant is entitled to a hearing on alleged violations of release conditions. If the court finds a violation, the court may revise conditions of release as provided ~~for~~ in Rule 6.02, subd. 1. Subd. 4. Commission of Crime. When ~~it is shown that~~ a complaint ~~has been~~is filed or indictment returned charging a defendant with ~~the commission of~~ committing 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.	Subd. 2. Arrest Without Warrant. A peace officer may arrest a released defendant if the officer has probable cause to believe a release condition has been violated and it reasonably appears continued release will endanger the safety of any person. The officer must promptly take the defendant before a judge. When possible, a warrant should be obtained before making an arrest under this rule. Subd. 3. Hearing. The defendant is entitled to a hearing on alleged violations of release conditions. If the court finds a violation, the court may revise conditions of release as provided in Rule 6.02, subd. 1. Subd. 4. Commission of Crime. When a complaint is filed or indictment returned charging a defendant with committing 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 release as provided for in Rule 6.02, subd. 1.
Rule 6.04 Forfeiture ~~The procedure for forfeiture~~Forfeiture of an appearance bond ~~shall~~must be as provided by ~~the~~ law.	**Rule 6.04 Forfeiture** Forfeiture of an appearance bond must be as provided by law.
Rule 6.05 ~~Supervision of~~ Detention Supervision The ~~trial~~ court ~~shall~~ must ~~exercise supervision over the~~supervise a defendant's detention ~~of defendants within the court's jurisdiction for the purpose of~~ to eliminat~~e~~ing ~~all~~ unnecessary detention. A~~The officer in charge of a~~ detention facility ~~shall~~ must make at least bi-weekly reports to the ~~prosecuting attorney~~prosecutor and ~~to~~ the court ~~having jurisdiction over the~~ listing prisoners	**Rule 6.05 Detention Supervision** The court must supervise a defendant's detention to eliminate all unnecessary detention. A detention facility must make at least bi-weekly reports to the prosecutor and the court listing prisoners in custody for more than 10 days in felony and gross misdemeanor cases, and prisoners in custody more than 2 days in misdemeanor cases.

~~listing each defendant who has been held~~ in custody ~~pending criminal charges, arraignment, trial, sentence or revocation of probation or parole~~ for more than~~a period in excess of ten (~~10~~)~~ days in felony and gross misdemeanor cases, and prisoners in custody more than ~~in excess of two (~~2~~)~~ days in misdemeanor cases.

Rule 6.06 Misdemeanor Trial Date~~s in Misdemeanor Cases~~

A defendant ~~shall~~ must be tried ~~as soon as possible~~promptly after ~~entry of~~ entering a not guilty plea. If a defendant or the prosecutor demands a speedy trial~~On demand made~~ in writing or ~~orally~~ on the record ~~by the prosecuting attorney or the defendant~~, the trial ~~shall~~ must begin~~be commenced~~ within ~~sixty (~~60~~)~~ days~~. from the date of the demand unless good cause is shown upon the prosecuting attorney's or the defendant's motion or upon the court's initiative why the defendant should not be brought to trial within that period.~~

The 60-day ~~time~~ period ~~shall not~~ begins to run on the day~~earlier than the date~~ of the not guilty plea, and may be extended for good cause shown on motion of the prosecutor or the defendant, or on the court's initiative. If an in-custody defendant's ~~Where the defendant is in custody,~~ trial does not begin ~~shall be commenced within~~in ~~ten (~~10~~)~~ days ~~of demand and if not so commenced~~, the defendant ~~shall~~ must be released subject to ~~such~~ nonmonetary release conditions as set~~may be required~~ by the court under Rule 6.02, subd. 1.

Comment—Rule 6

In misdemeanor cases a citation ~~ordinarily~~ must be issued if the misdemeanor charged is not punishable by incarceration. ~~It is the opinion of the Advisory Committee that where possible, a~~A person should not be taken into custody for an offense ~~for which the person could not be incarcerated even if found guilty~~that cannot be punished by incarceration. Rule 1.04(a) defines misdemeanors.

~~Rule 6.01 adopts the policy expressed in ABA Standards, Pre-Trial Release, 2.1 (Approved Draft, 1968) favoring the issuance of citations in~~

Rule 6.06 Misdemeanor Trial Dates

A defendant must be tried promptly after entering a not guilty plea. If a defendant or the prosecutor demands a speedy trial in writing or on the record, the trial must begin within 60 days.

The 60-day period begins to run on the day of the not guilty plea, and may be extended for good cause shown on motion of the prosecutor or the defendant, or on the court's initiative. If an in-custody defendant's trial does not begin in 10 days, the defendant must be released subject to nonmonetary release conditions as set by the court under Rule 6.02, subd. 1.

Comment—Rule 6

In misdemeanor cases a citation must be issued if the misdemeanor charged is not punishable by incarceration. A person should not be taken into custody for an offense that cannot be punished by incarceration. Rule 1.04(a) defines misdemeanors.

The uniform traffic ticket may be used to issue a citation under Rule 6.01. Minn. Stat. § 169.99.

The arresting officer is to decide whether to

~~*lieu of arrest or of continued custody after an arrest by an officer acting without a warrant.*~~

~~*Rule 6.01, subd. 1(1)(a) and (b) make it mandatory upon the arresting or detaining officer and officer in charge of the stationhouse to issue a citation to any person who is subject to lawful arrest without a warrant for misdemeanors, including ordinance violations, or who has been arrested without a warrant for those offenses, unless it reasonably appears to the officer that 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 accused will fail to respond to a citation.*~~ *The uniform traffic ticket may be used to issue a citation under Rule 6.01~~for this purpose~~. Minn. Stat. § 169.99~~ (1971)~~.*

~~*The initial determination of whether to issue a citation is to be made by the arresting or detaining officer in the field*~~ *The arresting officer is to decide whether to issue a citation using ~~from~~ the information available ~~on the spot~~at the time. If that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make a determination from all the information ~~that may~~ then ~~be~~ available, including any additional information disclosed by further interrogation and investigation.*

~~*In making their determination of whether to issue a citation, the officers may take into account the defendant's place and length of residence, family relationships, references, present and past employment, criminal record, past history of response to criminal process, and such facts as have a bearing on the likelihood of harmful or criminal conduct. (See ABA Standards, Pre-Trial Release 2.2, 2.3 (Approved Draft, 1968).)*~~

~~*By Rule 6.01, subd. 1(1), if a citation is not issued and an arrest is made, the officer shall report to the court the reasons for not issuing it, but the failure to issue a citation is not jurisdictional. The reasons for failing to issue a citation should be specified particularly for the defendant involved. It is not sufficient to simply use a checklist or only the words of the rule to justify the failure to issue a citation. Under these rules an arrest for a misdemeanor should be*~~ *issue a citation using the information available at the time. If that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make a determination from all the information then available, including any additional information disclosed by further interrogation and investigation.*

Rule 6.01, subd. 6 is intended merely to stress that issuing a citation in lieu of a custodial arrest or continued detention does not affect a law enforcement officer's statutory right to transport a person in need of care to an appropriate medical facility. A law enforcement officer's power to transport a person for such purposes is still governed by statute and is neither expanded nor contracted by Rule 6.01, subd. 6. See, e.g., Minn. Stat. § 609.06, subd. 1(9) about the right to use reasonable force, in certain situations, toward mentally ill or mentally defective persons and Minn. Stat. § 253B.05, subd. 2 governing the right of a health or peace officer to transport mentally ill or intoxicated persons to various places for care.

These rules do not prescribe the consequences of failing to obey a citation. The remedy available is the issuance of a warrant or summons upon a complaint.

Rule 6.02, subd. 1 specifies the conditions of release that can be imposed on a defendant at the first appearance. If conditions of release are endorsed on the warrant (Rule 3.02, subd. 1), the defendant must be released on meeting those conditions.

Release on "personal recognizance" is a release without bail on defendant's promise to appear at appropriate times. An "Order to Appear" is an order issued by the court releasing the defendant from custody or continuing the defendant at large pending disposition of the case, but requiring the defendant to appear in court or in some other place at all appropriate times.

The conditions of release must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should only be required when no other conditions will

~~*considered the exception rather than the normal practice.*~~

~~*Under present Minnesota statutory law (Minn. Stat. §§ 492.01 to 492.06, 487.28 (1971)), citations may be issued for traffic and specified ordinance violations for which a traffic and ordinance violations bureau has been established. Traffic tickets for traffic violations may be issued under Minn. Stat. § 169.91 (1971). Rule 6.01, subd. 1 extends the authority to issue citations for all misdemeanors and ordinance violations and makes it mandatory unless it reasonably appears to the arresting or detaining officer or officer in charge of the stationhouse that detention is necessary to prevent harmful or criminal conduct or that there is substantial likelihood that the defendant will not appear in response to a citation.*~~

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

~~*Rule 6.01, subd. 2 gives the officer in charge of the stationhouse permissive authority to issue citations for gross misdemeanors and felonies unless it reasonably appears that detention is necessary to prevent harmful or criminal conduct or that the defendant may not appear in response to a citation. (This follows in substance the recommendation of ABA Standards, Pre-Trial Release 2.3(a) (Approved Draft, 1968).)*~~

~~*The form of citation prescribed by Rule 6.01, subd. 3 follows ABA Standards, Pre-Trial Release, 1.4(a) (Approved Draft, 1968), except that the provision for a written promise to appear has been eliminated. It is the belief of the Advisory Committee that requiring a written promise to appear will add very little additional assurance that the defendant will appear and may cause an unnecessary confrontation between the defendant and the law enforcement officer. If it reasonably appears to the law enforcement officer that there is a substantial likelihood that the accused will fail to respond to the citation, an arrest may be made. If the defendant does not respond to the citation as directed and a summons or warrant is necessary, the facts establishing probable cause need not be set forth separately in the complaint as is*~~

reasonably ensure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance.

Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985) provide for release upon posting of 10 percent of the face value of an unsecured bond and upon posting of a secured bond by an uncompensated surety. Although Rule 6.02 does not expressly authorize these options, the rule is broad enough to permit the court to set such conditions of release in an unusual case. If the 10 percent cash option is authorized by the district court, it should be in lieu of, not in addition to, an unsecured bond, because there is generally no reasonable expectation of collecting on the unsecured bond and the public should not be deluded into thinking it will be collected. The court should consider the availability of a reliable person to help assure the defendant's appearance. If cash bail is deposited with the court it is deemed the property of the defendant under Minn. Stat. § 629.53 and according to that statute the court can apply the deposit to any fine or restitution imposed.

For certain driving while intoxicated prosecutions under Minn. Stat. § 169A.20, if the defendant has prior convictions under that or related statutes, the court may impose the conditions of release set forth in Minn. Stat. § 169A.44. Conditions may include alcohol testing and license plate impoundment. However, Rule 6.02 subd. 1 requires that the court must set the amount of money bail without any other conditions on which the defendant can obtain release. The Advisory Committee was of the opinion that this is required by the defendant's constitutional right to bail. Minn. Const. Art. 1, § 7 makes all persons bailable by sufficient sureties for all offenses. It would violate this constitutional provision for the court to require that the monetary bail could be satisfied only by a cash deposit. The defendant must also be given the option of satisfying the monetary bail by sufficient sureties. State v. Brooks, 604 N.W.2d 345 (Minn. 2000).

If the court sets conditions of release, aside

~~*otherwise required by Rule 2.01. Rather, the citation may be attached to the complaint which is then sworn to by the complainant. This is in accord with the current practice in many courts. If such a complaint is issued the defendant still retains the right under Rule 4.02, subd. 5(3) to demand a complaint that complies with the requirements of Rule 2.01.*~~

~~*Rule 6.01, subd. 4 that the issuance of a citation does not prevent or affect an otherwise lawful search adopts ABA Standards, Pre-Trial Release 2.4 (Approved Draft, 1968).*~~

~~*Rule 6.01, subd. 5 authorizing an officer who issues a citation to take the accused to a medical facility adopts ABA Standards, Pre-Trial Release 2.5 (Approved Draft, 1968).*~~ *Rule 6.01, subd. ~~5~~6 ~~is intended merely to~~ stress~~es~~ that ~~the issuance of~~ issuing a citation in lieu of a custodial arrest or continued detention does not affect ~~the statutory rights of~~ a law enforcement officer~~'s statutory right~~ to transport a person in need of care to an appropriate medical facility. ~~The extent of a~~A law enforcement officer's power to transport a person for such purposes ~~will~~ is still ~~be~~ governed by statute and is neither expanded nor contracted by Rule 6.01, subd. ~~5~~6. See, e.g., Minn. Stat. § 609.06, subd. 1(~~8~~9) ~~regarding~~ about the right to use reasonable force, in certain situations, toward mentally ill or mentally defective persons and Minn. Stat. § ~~253A.04~~253B.05, subd. 2 governing the right of a health or peace officer to transport mentally ill or intoxicated persons to various places for care.*

These rules do not prescribe the consequences of ~~a failure~~failing to obey a citation. The remedy available is the issuance of a warrant or summons upon a complaint.

~~*These rules do not require the adoption of a bail schedule. The purpose of these rules is to assure that whenever reasonably possible defendant will be released without bail. Any bail schedule adopted pursuant to Minn. Stat. § 629.71 (1971) should be applied only in those cases where the defendant would not otherwise be released without bail or upon issuance of a citation under these rules. The maximum cash bail which can be required for misdemeanors will*~~ *from an appearance bond, then the court must issue a written order stating those conditions. Any written order must be issued promptly and the defendant's release must not be delayed. In addition to providing a copy of the order to the defendant, the court must immediately provide it to the law enforcement agency that has or had custody of the defendant along with information about the named victim's whereabouts. This provision for a written order is in accord with Minn. Stat. § 629.715 which concerns conditions of release for defendants charged with crimes against persons. Written orders are required because it is important that the defendant, concerned persons, and law enforcement officers know precisely the conditions that govern the defendant's release.*

When setting bail or other conditions of release, see Minn. Stat. § 629.72, subd. 7 and Minn. Stat. § 629.725 as to the court's duty to provide notice of a hearing on the defendant's release from pretrial detention in domestic abuse, harassment or crimes of violence cases. Also see Minn. Stat. § 629.72, subd. 6 and Minn. Stat. § 629.73 as to the duty of the law enforcement agency having custody of the defendant in such cases to provide notice of the defendant's impending release.

When imposing release conditions under Rule 6.02, subd. 2, Recommendation 5, concerning sexual assault, in the Final Report of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts, 15 Wm.Mitchell L.Rev. 827 (1989), states that "Minnesota judges should not distinguish in setting bail, conditions of release, or sentencing in non-familial criminal sexual conduct cases on the basis of whether the victim and defendant were acquainted." This prohibition should be applied in setting bail in other cases as well.

NOTE: Rule 6 does not cover appeal of the release decision nor does it include release after a conviction. Appeal of the release decision is permitted under Rules 28 and 29. These rules also set standards and procedures for releasing a defendant after conviction.

Rule 6.03 prescribes the procedures followed

~~*continue to be twice the highest possible cash fine upon conviction as prescribed by Minn. Stat. § 629.47 (1971).*~~

Rule 6.02, subd. 1 ~~specifying~~specifies the conditions of release that ~~may~~ can be imposed ~~up~~on a defendant at the first appearance~~. before a judge, judicial officer, or court (Rule 5.05, See also Rules 6.02, subd. 4, 19.05) is taken from the Bail Reform Act of 1966, 18 U.S.C. §§ 3141-3152, and in general follows ABA Standards, Pre-Trial Release 5.1, 5.3 (Approved Draft, 1968).~~ If conditions of release are endorsed on the warrant (Rule 3.02, subd. 1), the defendant ~~should~~must be released on meeting those conditions.

~~*Rule 6.02, subd. 1 substantially follows the language of § 3146(a). The rule directs that the defendant shall be released on personal recognizance, or on order to appear, or on the execution of an unsecured appearance bond unless the judge or judicial officer determines, in the exercise of discretion, that release by one of those methods will not reasonably assure the defendant's appearance.*~~

~~*Release on "personal recognizance" is a release without bail upon defendant's written promise to appear at appropriate times. (See ABA Standards, Pre-Trial Release 1.4(d) (Approved Draft, 1968).) An "Order to Appear" is an order issued by the court releasing the defendant from custody or continuing the defendant at large pending disposition of the case, but requiring the defendant to appear in court or in some other place at all appropriate times. (See ABA Standards, Pre-Trial Release, 1.4(c) (Approved Draft, 1968).)*~~

~~*If the court determines that release on personal recognizance, order to appear, or on an unsecured appearance bond will be inimical of public safety or will not reasonably secure the defendant's appearance, the court shall in lieu of or in addition to those methods of release impose the first or any combination of the four conditions specified in Rule 6.02, subd. 1 that will assure appearance.*~~

~~*Basically these conditions are taken from 18 when conditions of release are violated. The Rule requires issuing a summons rather than a warrant under circumstances similar to those required under Rule 3.01. Rule 6.03, subd. 3, requires only an informal hearing and does not require a showing of willful default, but leaves it to the court's discretion to determine under all of the circumstances whether to continue or revise the possible release conditions. On finding a violation, 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.*~~

~~*There are no provisions similar to Rule 6.03 in existing Minnesota statutory law except Minn. Stat. § 629.58, which provides that if a defendant fails to perform the conditions of a recognizance, process must be issued against the persons so bound. Rule 6.03, subds. 1 and 2 take the place of that statute.*~~

~~*Minn. Stat. § 629.63 providing for surrender of the defendant by the surety on the defendant's bond is not affected by Rule 6.03. To the extent that it is inconsistent with Rule 6.03 and Rule 6.02, subds. 1 and 2, however, Minn. Stat. § 629.64, requiring that in the event a defendant is surrendered by such surety money bail must be set, is superseded.*~~

~~*As to sanctions for violating Rule 6.06 speedy trial provisions, see State v. Kasper, 411 N.W.2d 182 (Minn.1987) and State v. Friberg, 435 N.W.2d 509 (Minn.1989). As to the right to a speedy trial generally, see the comments to Rule 11.09.*~~

~~U.S.C. § 3146 and ABA Standards, Pre-Trial Release, 5.2, 5.3 (Approved Draft, 1968). They emphasize that the~~The conditions of release ~~should~~ must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should only be ~~reduced to minimal proportions. It should be~~ required when ~~only in cases in which~~ no other conditions will reasonably ~~insure~~ensure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance. *Rule 341(g)(2) of the Uniform Rules of Criminal Procedure (1987) and Standard 10-5.3(d) of the American Bar Association Standards for Criminal Justice (1985) provide for release upon posting of ~~ten~~ 10 percent of the face value of an unsecured bond and upon posting of a secured bond by an uncompensated surety. Although Rule 6.02 does not expressly authorize these options, the rule is broad enough to permit the court to set such conditions of release in an unusual case. If the ~~ten~~ 10 percent cash option is authorized by the ~~trial~~ district court, it should be in lieu of, not in addition to, an unsecured bond, because there is generally no reasonable expectation of collecting on the unsecured bond and the public should not be deluded into thinking it will be collected. The ~~judge~~ court should consider the availability of a reliable person~~,~~ to help assure the defendant's appearance~~ of the defendant~~. If cash bail is deposited with the court it is deemed ~~to be~~ the property of the defendant ~~pursuant to~~under Minn. Stat. § 629.53 ~~(1993)~~ and according to that statute the court ~~may~~ can apply the deposit to any fine or restitution imposed.* *For certain driving while intoxicated prosecutions under Minn. Stat. § ~~169.121~~169A.20, ~~where~~if the defendant has prior convictions under that or related statutes, the court may impose the conditions of release set forth in Minn. Stat. § ~~169.121, subd. 1c (1997)~~169A.44. ~~Those c~~Conditions ~~could~~ may include alcohol testing and license plate impoundment~~ of license plates~~. However, Rule 6.02 subd. 1 requires that ~~even though the court sets conditions other than money bail upon which the defendant may be released, or even though the court prescribes other conditions~~*	

~~in addition to money bail,~~ the court ~~shall~~ must ~~also fix~~set the amount of money bail ~~(secured by cash, property, or qualified sureties)~~ without any other conditions ~~up~~on which the defendant ~~may~~ can obtain release. The Advisory Committee was of the opinion that this is required by the defendant's constitutional right to bail. Minn. Const. Art. 1, § 7 makes all persons bailable by sufficient sureties for all offenses. It would violate this constitutional provision for the court to require that the monetary bail could be satisfied only by a cash deposit. The defendant must also be given the option of satisfying the monetary bail by sufficient sureties. State v. Brooks, 604 N.W.2d 345 (Minn. 2000). *If the court sets conditions of release, aside from an appearance bond, then the court must issue a written order stating those conditions. Any ~~such~~ written order ~~should~~ must be issued promptly and the defendant's release ~~should~~ must not be ~~unnecessarily~~ delayed. In addition to providing a copy of ~~any such~~the order to the defendant, the court must immediately provide it to the law enforcement agency that has or had custody of the defendant along with information about the named victim's whereabouts. This provision for a written order is in accord with Minn. Stat. § 629.715 ~~(1997)~~ which concerns conditions of release for defendants charged with crimes against persons. ~~Such w~~Written orders are required because it is important that the defendant, ~~as well as other~~ concerned persons, and law enforcement officers~~,~~ know precisely ~~what~~ the conditions that govern the defendant's release.* *~~In connection with the~~ When setting ~~of~~ bail or other conditions of release, see Minn. Stat. § 629.72, subd. 7 and Minn. Stat. § 629.725 as to the court's duty ~~of the court~~ to provide notice of a hearing on the defendant's release ~~of the defendant~~ from pretrial detention in domestic abuse, harassment or crimes of violence cases. Also see Minn. Stat. § 629.72, subd. 6 and Minn. Stat. § 629.73 as to the duty of the law enforcement agency having custody of the defendant in such cases to provide notice of the defendant's impending release.* *~~Under Rule 6.02, subd. 1, defendant's release, in whatever form, shall be conditioned on~~*	

~~appearance at trial or hearing, including the Omnibus Hearing under Rule 11, and at the taking of depositions under Rule 21.01.~~

~~Rule 6.02, subd. 2 enumerates the factors that a court shall take into account in determining the conditions of release (including personal recognizance, order to appear, or unsecured bond) that will reasonably assure the defendant's appearance. This rule follows the language of 18 U.S.C. § 3146(b) and ABA Standards, Pre-Trial Release, 5.1 (Approved Draft, 1968). It also permits the court to consider the safety of any other person or the community in determining the conditions of release to be imposed.~~

~~——~~When imposing release conditions under Rule 6.02, subd. 2, Recommendation 5, concerning sexual assault, in the Final Report of the Minnesota Supreme Court Task Force on Gender Fairness in the Courts, 15 Wm.Mitchell L.Rev. 827 (1989), states that "Minnesota judges should not distinguish in setting bail, conditions of release, or sentencing in non-familial criminal sexual conduct cases on the basis of whether the victim and defendant were acquainted." This prohibition should be applied in setting bail in other cases as well.

~~Rule 6.02, subd. 3 authorizing a pre-release investigation to obtain the necessary information for making the release decision is in accord with ABA Standards, Pre-Trial Release, 4.5 (Approved Draft, 1968).~~

~~Under Rule 6.02, subd. 4 the court which initially set conditions of release may on motion re-examine them if the case is still pending before that court, and may continue or revise the conditions in accordance with Rule 6.02, subds. 1 and 2. If the case is not pending before that court, the conditions of release may on motion be reviewed and continued or revised under the provisions of Rule 6.02, subds. 1 and 2 by the court before which the case is then pending. This is generally in accord with 18 U.S.C. § 3147(a) and ABA Standards, Pre-Trial Release, 5.9(b) (Approved Draft, 1968).~~

NOTE: ~~The rule~~Rule 6 does not cover appeal of the release decision nor does it include release

~~following~~ after a conviction. Appeal of the release decision is permitted under Rules 28 and 29. These rules also set standards and procedures for ~~the release of~~releasing a defendant ~~following~~ after conviction. *Rule 6.03 prescribes the procedures ~~to be~~ followed ~~upon violation of~~ when conditions of release are violated. ~~The rule is substantially in accord with the ABA Standards, Pre-Trial Release, 10-5.6 (Approved Draft, 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,~~ The Rule ~~6.03~~ requires issuing ~~the issuance of~~ a summons rather than a warrant under circumstances similar to those required under Rule 3.01. ~~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 court's discretion ~~of the court~~ to determine under all of the circumstances whether to continue or revise the possible release conditions ~~of possible release~~. On finding a violation, 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.* *There are no provisions similar to Rule 6.03 in existing Minnesota statutory law except Minn.*	

Stat. § 629.58~~(1971)~~ , which provides that if a defendant fails to perform the conditions of a recognizance, process ~~shall~~ must be issued against the persons so bound ~~thereby~~. Rule 6.03, subds. 1 and 2 take the place of that statute.

Minn. Stat. § 629.63 ~~(1971)~~ providing for surrender of the defendant by the surety on the defendant's bond is not affected by Rule 6.03. To the extent that it is inconsistent with Rule 6.03 and Rule 6.02, subds. 1 and 2, however, Minn. Stat. § 629.64, requiring that in the event a defendant is surrendered by such surety money bail ~~shall~~ must be set, is superseded.

~~*Rule 6.03, subd. 4 follows in substance ABA Standards, Pre-Trial Release, 5.8 (Approved Draft, 1968). The rule provides for a review of release conditions when the defendant has been subsequently charged by complaint or indictment with a crime (other than that upon which initially released). The rule provides that the court with jurisdiction over the prior charge shall review the release conditions upon that charge and may continue or revise them (governed by the considerations set forth in Rule 6.02, subds. 1 and 2).*~~

~~*Rule 6.04 continues the existing procedures for forfeiture of an appearance bond (Minn. Stat. §§ 629.48, 629.58-60 (1971)).*~~

~~*Rule 6.05 providing for the trial court's supervision and review on the court's own motion of the detention of defendants under the court's jurisdiction, is in accord with ABA Standards, Pre-Trial Release, 5.9(c) (Approved Draft, 1968).*~~

~~*Rule 6.06 provides that in misdemeanor cases a defendant shall be brought to trial within 60 days after demand therefor is made by the prosecuting attorney or defendant, unless good cause is shown for a delay, but regardless of a demand the defendant shall be tried as soon as possible. The trial may be postponed upon request of the prosecuting attorney or the defendant, or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist.*~~ *As to sanctions for violating Rule 6.06 speedy trial*

provisions, ~~As to sanctions for violation of these speedy trial provisions~~ see State v. Kasper, 411 N.W.2d 182 (Minn.1987) and State v. Friberg, 435 N.W.2d 509 (Minn.1989). ~~In misdemeanor cases Rule 6.06 supersedes Minn. Stat. § 611.04, (1971) which requireds the defendant to be brought to trial at the next term of court.~~ As to the right to a speedy trial generally, see the comments to Rule 11.~~10~~09.	

Proposed Revisions to Minn. R. Crim. P. 7

Original Language Showing Markup	Proposed Revised Language
Rule 7. NOTICE BY ~~PROSECUTING ATTORNEY~~PROSECUTOR OF OMNIBUS ISSUES, OTHER OFFENSES EVIDENCE, AND ~~IDENTIFICATION PROCEDURES~~ INTENT TO SEEK AGGRAVATED SENTENCE~~; COMPLETION OF DISCOVERY~~	**Rule 7. NOTICE BY PROSECUTOR OF OMNIBUS ISSUES, OTHER OFFENSES EVIDENCE, AND INTENT TO SEEK AGGRAVATED SENTENCE**
Rule 7.01 Notice of ~~Evidence and Identification Procedures~~Omnibus Issues	**Rule 7.01 Notice of Omnibus Issues**
In any case where a right to a jury trial ~~is to be held~~exists, the prosecutor must notify the defendant or defense counsel ~~when the prosecution has~~of: (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping; (2) any confessions, admissions, or statements in the nature of confessions made by the defendant; (3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or (4) ~~when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to~~ any evidence of lineups, show-ups, or other ~~observations of the defendant and the exhibition of photographs of~~ procedures used to identify the defendant or ~~of~~ any other person~~s, the prosecuting attorney shall notify the defendant or defense counsel of such evidence and identification procedures~~. In felony and gross misdemeanor cases, this notice ~~shall~~must be given in writing on or before the date set for the defendant's initial appearance in the district court ~~as provided by~~under Rule 5.0~~3~~5. In misdemeanor cases, this notice ~~shall~~must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or ~~seven (~~7~~)~~ days before trial if no pretrial conference is ~~to be~~ held.	In any case where a right to a jury trial exists, the prosecutor must notify the defendant or defense counsel of: (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping; (2) any confessions, admissions, or statements in the nature of confessions made by the defendant; (3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or (4) any evidence of lineups, show-ups, or other procedures used to identify the defendant or any other person. In felony and gross misdemeanor cases, this notice must be given in writing on or before the date set for the defendant's initial appearance in the district court under Rule 5.05. In misdemeanor cases, this notice must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or 7 days before trial if no pretrial conference is held. This written notice may be served: (1) personally on the defendant or defense counsel; (2) by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there; or

Original Language Showing Markup	Proposed Revised Language
~~Such~~ This written notice may be served: (1) personally on the defendant or defense counsel; (2) ~~given either personally or~~ by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there; or (3) ~~or~~ by ordinary mail sent to defense counsel's ~~last known residential or~~ business address or ~~by leaving it~~left at this ~~at such~~ address with a person of suitable age and discretion ~~then residing or~~ working there.	(3) by ordinary mail sent to defense counsel's business address or left at this address with a person of suitable age and discretion working there.
Rule 7.02 Notice of ~~Additional~~ Other Offenses	**Rule 7.02 Notice of Other Offenses**
The ~~prosecuting attorney shall~~prosecutor must notify the defendant or defense counsel in writing of any additional offenses~~, the evidence of which~~ that may be offered at the trial under any exceptions to the general exclusionary rule. In ~~cases of~~ felon~~ies~~y and gross misdemeanor~~s~~ cases, the notice ~~shall~~must be given at or before the Omnibus Hearing under Rule 11, or as soon after ~~the Omnibus Hearing~~that hearing as the offenses become known to the ~~prosecuting attorney~~prosecutor. In misdemeanor cases, the notice ~~shall~~must be given at or before ~~the~~a pretrial conference under Rule 12, if held, or as soon ~~there~~after the hearing as the offense~~s~~ become~~s~~ known to the ~~prosecuting attorney~~prosecutor. If no pretrial conference is held, then the notice ~~shall~~must be given at least ~~seven (~~7~~)~~ days before trial or as soon ~~thereafter~~ as ~~known to~~ the ~~prosecuting attorney~~prosecutor learns of the other offenses. ~~Such~~ The additional offenses ~~shall~~must be described with sufficient particularity to enable the defendant to prepare for trial. ~~The notice need not include offenses for which the defendant has been previously prosecuted or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged against defendant arose.~~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.	The prosecutor must notify the defendant or defense counsel in writing of any additional offenses that may be offered at the trial under any exceptions to the general exclusionary rule. 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 offenses become known to the prosecutor. 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 offenses become known to the prosecutor. If no pretrial conference is held, then the notice must be given at least 7 days before trial or as soon as the prosecutor learns of the other offenses. 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.

Original Language Showing Markup	Proposed Revised Language
Rule 7.03 Notice of ~~Prosecutor's~~ Intent to Seek an Aggravated Sentence The prosecutor must give written notice ~~A~~at least 7~~seven~~ days ~~prior to~~before the Omnibus Hearing of intent to seek an aggravated sentence. ~~,~~ ~~or~~ ~~at such~~ Notice may be given later ~~time~~ if permitted by the court~~,~~ ~~up~~on good cause ~~shown~~ and ~~up~~on ~~such~~ conditions ~~as~~that will not unfairly prejudice the defendant~~, the prosecuting attorney shall notify the defendant or defense counsel in writing of intent to seek an aggravated sentence~~. The notice ~~shall~~must include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence.	**Rule 7.03 Notice of Intent to Seek an Aggravated Sentence** The prosecutor must give written notice at least 7 days before the Omnibus Hearing of intent to seek an aggravated sentence. Notice may be given later if permitted by the court on good cause and on conditions that will not unfairly prejudice the defendant. The notice must include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence.
Rule 7.04 Completion of Discovery Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the ~~prosecution~~prosecutor and defendant ~~shall~~must complete the discovery that is required by Rules 9.01 and ~~Rule~~ 9.02 to be made without the necessity of an order of the court. Rule 9.04 governs completion of discovery for misdemeanor cases. ~~In misdemeanor cases, before arraignment or at any time before trial, the prosecutor must, on request, permit the defendant or defense counsel to inspect the police investigatory reports without a court order. Upon request, the prosecutor must also disclose any material or any information within the prosecutor's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged. After arraignment and upon request, the defendant or defense counsel must be provided a reproduction of the police investigatory reports. Any other discovery must be the consent of the parties or by motion to the court.~~ ~~The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel an exact reproduction of the reports, including E-mail, facsimile transmission, or similar method if that method is available to both parties. A reasonable charge may be made to cover the actual costs of reproduction. No fee can be charged if :~~	**Rule 7.04 Completion of Discovery** Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecutor and defendant must complete the discovery that is required by Rules 9.01 and 9.02 to be made without the necessity of an order of the court. Rule 9.04 governs completion of discovery for misdemeanor cases.

Original Language Showing Markup	Proposed Revised Language
~~(1) the defendant is represented by the public defender or an attorney working for a public defense corporation under Minnesota Statutes, section 611.216; or~~ ~~(2) a court determines the defendant financially unable to obtain counsel under Rule 5.02.~~ **Comment—Rule 7** *Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 553-54, 141 N.W.2d 3, 13 (1965)) of evidence obtained from the defendant and of identification procedures must~~*~~shall~~* *be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after the first appearance in the court under Rule 5)* ~~*in order*~~ *so that the defendant may determine at the time of the* ~~*appearance in the district court under*~~ *Rule 8 appearance whether to waive or demand a Rasmussen hearing (Rule 8.03). If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) no more than 28 days later. It is permissible for the prosecut*~~*ing attorney*~~ *to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.* *In misdemeanor cases under Rule 7.01, the Rasmussen notice of evidence obtained from the defendant and of identification procedures may be given at arraignment, and in such a case the waiver or demand of a hearing takes place at that time (Rule 5.0*~~*4*~~*6, subd. 4). However, since misdemeanor arraignments are often within one day or even a few hours of an arrest, a prosecutor may not have sufficient knowledge of the case to issue a Rasmussen notice at that time. Rather than discourage such prompt arraignments, this rule provides that the Rasmussen notice may be served as late as the pre-trial conference, if held, or at least seven days before trial if no pre-trial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held.* ~~*This continues present law under City of St. Paul v. Page, 285 Minn. 374, 173 N.W.2d 460 (1969).*~~ *Even where no notice is required,* ~~*however, it is anticipated that*~~ *the discovery permitted by Rule* ~~*7.03*~~*9.04 will give the defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.* *If the notice required by Rule 7.01 is not*	**Comment—Rule 7** *Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 553-54, 141 N.W.2d 3, 13 (1965)) of evidence obtained from the defendant and of identification procedures must be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after the first appearance in the court under Rule 5) so that the defendant may determine at the time of the Rule 8 appearance whether to waive or demand a Rasmussen hearing (Rule 8.03). If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) no more than 28 days later. It is permissible for the prosecutor to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.* *In misdemeanor cases under Rule 7.01, the Rasmussen notice of evidence obtained from the defendant and of identification procedures may be given at arraignment, and in such a case the waiver or demand of a hearing takes place at that time (Rule 5.06, subd. 4). However, since misdemeanor arraignments are often within one day or even a few hours of an arrest, a prosecutor may not have sufficient knowledge of the case to issue a Rasmussen notice at that time. Rather than discourage such prompt arraignments, this rule provides that the Rasmussen notice may be served as late as the pre-trial conference, if held, or at least seven days before trial if no pre-trial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held. Even where no notice is required, the discovery permitted by Rule 9.04 will give the defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.* *If the notice required by Rule 7.01 is not*

Original Language Showing Markup	Proposed Revised Language
defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice. *~~The notice required by Rule 7.01 must be in writing in felony and gross misdemeanor cases and may be either in writing or oral on the record in misdemeanor cases. Any written notice may be delivered either personally or by ordinary mail to the defendant's or defense counsel's last known residential or business address or by leaving it at such address with a person of suitable age and discretion then residing or working there.~~ If the notice required by Rule 7.01 is not actually received, the court may grant a continuance to prevent any prejudice due to surprise.* *Rule 7.02 requires that the Spreigl notice ~~(State v. Spreigl, 272 Minn. 488, 139 N.W.2d 167 (1965), State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967)) of additional offenses~~ be given on or before the date of the Omnibus Hearing (Rule 11) in order that any issues that may arise as to the admissibility of the evidence of these offenses at trial may be ascertained and determined at the Omnibus Hearing~~.~~ (Rule ~~11.04.~~11.05~~)~~. If the prosecutor~~ing attorney~~ learns of any such offenses after the Omnibus Hearing, the prosecutor~~ing attorney~~ must~~shall~~ immediately give notice ~~thereof~~ to the defendant.* *Rule 7.03 establishes the notice requirements for a prosecutor to initiate proceedings seeking an aggravated sentence in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 ~~124 S.Ct. 2531~~ (2004). See Rule 1.04(d) as to the definition of "aggravated sentence." ~~Also, s~~See also the comments to that rule. The written notice required by Rule 7.03 must include not only the grounds or statute relied upon, but also a summary statement of the supporting factual basis. However, there is no requirement that the factual basis be given under oath. ~~In developing this rule, the Advisory Committee was concerned that if prosecutors were required to provide notice too early in the proceedings, they may not yet have sufficient information to make that decision and therefore may be inclined to overcharge. On the other hand it is important that defendants and~~*	*actually received, the court may grant a continuance to prevent any prejudice due to surprise.* *Rule 7.02 requires that the Spreigl notice be given on or before the date of the Omnibus Hearing (Rule 11) in order that any issues that may arise as to the admissibility of the evidence of these offenses at trial may be ascertained and determined at the Omnibus Hearing (Rule 11.05). If the prosecutor learns of any such offenses after the Omnibus Hearing, the prosecutor must immediately give notice to the defendant.* *Rule 7.03 establishes the notice requirements for a prosecutor to initiate proceedings seeking an aggravated sentence in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 (2004). See Rule 1.04(d) as to the definition of "aggravated sentence." See also the comments to that rule. The written notice required by Rule 7.03 must include not only the grounds or statute relied upon, but also a summary statement of the supporting factual basis. However, there is no requirement that the factual basis be given under oath. This rule balances the competing interests of the parties: the prosecution may not have sufficient evidence at charging to make the Blakely decision and the defense requires notice as early as possible to prepare an adequate defense. The rule recognizes that it may not always be possible to give notice by 7 days before the Omnibus Hearing and the court may permit a later notice for good cause so long as the later notice will not unfairly prejudice the defendant. In making that decision the court can consider whether a continuance of the proceedings or other conditions would cure any unfair prejudice to the defendant. Pretrial issues concerning a requested aggravated sentence will be considered and decided under the Omnibus Hearing provisions of Rule 11.05.* *Rule 7.04 provides that discovery required under Rule 9 in felony and gross misdemeanor cases must be completed by the prosecution and defense before the Omnibus Hearing (Rule 11). This will permit the court to resolve any issues that may have arisen between the parties with*

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~~*defense counsel have adequate advance notice of the aggravated sentence allegations so that they can defend against them. Further, the earlier that accurate, complete aggravated sentence notices are given, the more likely it is that cases can be settled, and at an earlier point in the proceedings. The requirement of the rule that notice be given at least seven days before the Omnibus Hearing balances these important, sometimes competing, policy considerations. However, the*~~ *This rule balances the competing interests of the parties: the prosecution may not have sufficient evidence at charging to make the Blakely decision and the defense requires notice as early as possible to prepare an adequate defense. The rule recognizes that it may not always be possible to give notice by* ~~*that time*~~ *7 days before the Omnibus Hearing and the court may permit a later notice for good cause* ~~*shown*~~ *so long as the later notice will not unfairly prejudice the defendant. In making that decision the court can consider whether a continuance of the proceedings or other conditions would cure any unfair prejudice to the defendant. Pretrial issues concerning a requested aggravated sentence will be considered and decided under the Omnibus Hearing provisions of Rule 11.05.* *Rule 7.04* ~~*requires*~~ *provides that* ~~*the*~~ *discovery* ~~*provided by Rules 9.01, subd. 1; 9.02, subd. 1 to be made without order of court*~~ *required under Rule 9 in felony and gross misdemeanor cases must*~~*shall*~~ *be completed by the prosecution and defense before the Omnibus Hearing (Rule 11). This will permit the court to resolve* ~~*at the Omnibus Hearing*~~ *any issues that may have arisen between the parties with respect to discovery (Rules 9.03, subd. 8;* ~~*11.04*~~*11.05) at the Omnibus Hearing. It may also result in a plea of guilty at the Omnibus Hearing (Rule 11.0*~~*7*~~*8). All notices under Rule 7 must*~~*shall*~~ *also be filed with the court (Rule 33.04). The discovery requirements for misdemeanor cases are set forth in Rule 9.04.* ~~*Rule 7.04, in misdemeanor cases, requires the prosecutor upon request of the defendant or defense counsel at any time before trial to permit inspection of the police investigatory reports in the case. Additionally, upon request of the defendant or defense counsel, the*~~	*respect to discovery (Rules 9.03, subd. 8; 11.05) at the Omnibus Hearing. It may also result in a plea of guilty at the Omnibus Hearing (Rule 11.08). All notices under Rule 7 must also be filed with the court (Rule 33.04). The discovery requirements for misdemeanor cases are set forth in Rule 9.04.*

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~~*prosecutor is obligated to provide a reproduction of the police investigatory reports to defendants or defense counsel after the arraignment. This obligation of the prosecutor to provide a reproduction of such reports may be satisfied not just by photocopying, but by other existing or future methods that permit transmission of an exact reproduction to the defendant or defense counsel. This would include E-mail or facsimile transmission if the defendant or defense counsel has the equipment necessary to receive such transmissions. The provision of the rule permitting free copies to public defenders and attorneys working for public defense corporation under Minn. Stat. § 611.216 is in accord with Minn. Stat. § 611.271.*~~ ~~*Under this rule the prosecutor should reveal not only the reports physically in the prosecutor's possession, but also those concerning the case which are yet in the possession of the police. This disclosure of investigatory reports is already the practice of many prosecutors and in most misdemeanor cases should be sufficient discovery. This type of discovery is particularly important in misdemeanor cases where prosecution can be initiated upon a tab charge (Rule 4.02, subd. 5(3)) without a complaint or indictment. A defendant, of course, may request a complaint under Rule 4.02, subd. 5(3) to be better informed of the charges, but it is expected that complaints will seldom be requested when the investigatory reports are disclosed to the defendant.*~~ ~~*In those rare cases where additional discovery is considered necessary by either party, it shall be by consent of the parties or by motion to the court. In such cases it is expected that the parties and the court will be guided by the extensive discovery provisions of these rules. Rule 9 provides guidelines for deciding any such motions, but they are not mandatory and the decision is within the discretion of the trial judge. State v. Davis, 592 N.W.2d 457 (Minn. 1999).*~~	

Proposed Revisions to Minn. R. Crim. P. 8

Original Language Showing Markup	Proposed Revised Language
Rule 8. ~~Defendant's~~Procedure on Second ~~Initial~~ Appearance ~~Before the District Court Following the Complaint or Tab Charge~~ in Felony and Gross Misdemeanor Cases	**Rule 8. Procedure on Second Appearance in Felony and Gross Misdemeanor Cases**
Rule 8.01. Purpose of Second Appearance	**Rule 8.01. Purpose of Second Appearance**
(a) The purpose of this hearing is to again advise defendants of their rights, to allow defendants to plead guilty, or if the defendant does not plead guilty, to request or waive an Omnibus hearing under Rule 11.	(a) The purpose of this hearing is to again advise defendants of their rights, to allow defendants to plead guilty, or if the defendant does not plead guilty, to request or waive an Omnibus Hearing under Rule 11.
(b) At this hearing, the court must again inform the defendant of the:	(b) At this hearing, the court must again inform the defendant of the:
(1) charge(s); (2) defendant's rights, including the right to counsel, and to have counsel appointed under Rule 5.02 if eligible, and; (3) opportunity to enter a guilty plea as permitted by Rule 8.02.	(1) charge(s); (2) defendant's rights, including the right to counsel, and to have counsel appointed under Rule 5.02 if eligible, and; (3) opportunity to enter a guilty plea as permitted by Rule 8.02.
(c) The court must ensure the defendant has a copy of the complaint or indictment.	(c) The court must ensure the defendant has a copy of the complaint or indictment.
(d) The court may continue or modify the defendant's bail or other conditions of release previously ordered.	(d) The court may continue or modify the defendant's bail or other conditions of release previously ordered.
Rule ~~8.01~~ 8.02~~Place of Appearance and~~ Arraignment	**Rule 8.02 Arraignment**
~~The defendant's initial appearance following the complaint or, for a designated gross misdemeanor as defined by Rule 1.04(b), a tab charge under this rule shall be held in the district court of the judicial district where the alleged offense was committed.~~	
Subd. 1. Entry of Plea. ~~Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, the~~ The arraignment must be conducted in open court.	Subd. 1. Entry of Plea. The arraignment must be conducted in open court. Except as provided in subdivision 2, the court must ask the defendant to enter a plea. The only plea a defendant may enter at the Rule 8 hearing is a guilty plea.

Except as provided in subdivision 2, the court must ask the defendant to enter a plea. ~~shall be arraigned upon the complaint or the complaint as it may be amended or, for designated gross misdemeanors, the tab charge, but may~~ The only ~~enter a~~ plea a defendant may enter at the Rule 8 hearing is a ~~of~~ guilty plea ~~at that time~~. If the defendant pleads guilty, the pre-sentencing and sentencing procedures in these rules must be followed. If the defendant does not wish to plead guilty, ~~no other plea shall be called for and~~ the arraignment ~~shall~~must be continued until the Omnibus Hearing when, ~~pursuant to~~under Rule 11.10, the defendant ~~shall~~must enter a ~~plead~~plea to the charges in the complaint or ~~the complaint as amended or~~ be given additional time within which to plead.	If the defendant pleads guilty, the pre-sentencing and sentencing procedures in these rules must be followed. If the defendant does not wish to plead guilty, the arraignment must be continued until the Omnibus Hearing when, under Rule 11.10, the defendant must enter a plea to the charges in the complaint or be given additional time within which to plead.
Subd. 2. Homicide or Offenses Punishable by Life Imprisonment. If the complaint charges ~~offense charged in the complaint is~~ a homicide, and the prosecuting attorney notifies the court that the case will be presented to the grand jury, or if the offense is punishable by life imprisonment, the defendant cannot enter a plea at the Rule 8 hearing. ~~the~~ ~~p~~Presentation of the case to the grand jury ~~shall~~must commence within 14 days from the date of defendant's appearance in the court under this rule, and an indictment or report of no indictment ~~shall~~must be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 ~~shall~~must be held as provided by Rule 19.04, subd. 5.	Subd. 2. Homicide or Offenses Punishable by Life Imprisonment. If the complaint charges a homicide, and the prosecuting attorney notifies the court that the case will be presented to the grand jury, or if the offense is punishable by life imprisonment, the defendant cannot enter a plea at the Rule 8 hearing. Presentation of the case to the grand jury must commence within 14 days from the date of defendant's appearance in the court under this rule, and an indictment or report of no indictment must be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 must be held as provided by Rule 19.04, subd. 5.
~~**Rule 8.02 Plea of Guilty**~~ ~~At an initial appearance under this rule, the defendant may enter a plea of guilty to a felony, a gross misdemeanor, or a misdemeanor as permitted under Rule 15. If the defendant enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be followed.~~	
Rule 8.03 Demand or Waiver of Hearing If the defendant does not plead guilty, the defendant and the ~~prosecution shall~~prosecutor must	**Rule 8.03 Demand or Waiver of Hearing** If the defendant does not plead guilty, the defendant and the prosecutor must each either waive

each either waive or demand a hearing as provided ~~by~~in Rule 11.02 on the admissibility at trial of ~~any of the~~ evidence specified in the prosecutor's Rule 7.01 notice ~~given by the prosecuting attorney under Rule 7.01,~~ or on the admissibility of any evidence obtained as a result of ~~such~~the specified evidence.	or demand a hearing as provided in Rule 11.02 on the admissibility at trial of evidence specified in the prosecutor's Rule 7.01 notice, or on the admissibility of any evidence obtained as a result of the specified evidence.
Rule 8.04 Plea and Time ~~and Place~~ of Omnibus Hearing	**Rule 8.04 Plea and Time of Omnibus Hearing**
(a) If the defendant does not plead guilty, the Omnibus Hearing on the issues as provided for ~~by~~in Rules 11.03 and 11.04~~,~~ ~~shall~~must be held within the time ~~hereinafter~~ specified in this rule.	(a) If the defendant does not plead guilty, the Omnibus Hearing on the issues as provided for in Rules 11.03 and 11.04 must be held within the time specified in this rule.
(b) If a hearing on either of the issues set forth in Rule 8.03 is demanded, the Omnibus Hearing ~~shall~~must also include the issues provided for ~~by~~in Rule 11.02.	(b) If a hearing on either of the issues set forth in Rule 8.03 is demanded, the Omnibus Hearing must also include the issues provided for in Rule 11.02.
(c) The Omnibus Hearing provided for ~~by~~in Rule 11 ~~shall~~must be scheduled for a date not later than ~~twenty-eight (~~28~~)~~ days after the defendant's appearance before the court under this rule. The court may extend ~~such~~the time for good cause related to the particular case ~~upon~~on motion of the ~~prosecuting attorney~~prosecutor or defendant or ~~upon~~on the court's initiative.	(c) The Omnibus Hearing provided for in Rule 11 must be scheduled for a date not later than 28 days after the defendant's appearance before the court under this rule. The court may extend the time for good cause related to the particular case on motion of the prosecutor or defendant or on the court's initiative.
Rule 8.05 Record	**Rule 8.05 Record**
A verbatim record ~~shall~~must be made of the proceedings ~~at the defendant's initial appearance before the court~~ under this rule.	A verbatim record must be made of the proceedings under this rule.
~~**Rule 8.06 Conditions of Release**~~	
~~In accordance with the rules governing bail or release, the court may continue or amend those conditions for defendant's release set by the court previously.~~	
Comment—Rule 8	**Comment—Rule 8**
~~*Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, upon the defendant's initial appearance before the*~~	*If the Rasmussen hearing is waived under Rule 8.03 by both the prosecution and the defense, the Omnibus Hearing provided by Rule 11 must be held without a Rasmussen hearing.*

~~court under this rule following a complaint charging a felony or gross misdemeanor or a tab charge charging a designated gross misdemeanor as defined by Rule 1.04(b) (within 14 days after the first appearance under Rule 5), the defendant shall, upon request, be permitted to plead guilty to the complaint, tab charge or amended complaint (See Rules 3.04, subd. 2; 17.05) as provided by Rule 15. At this stage of the proceeding, the tab charge or complaint which was filed in the court, or that complaint as it may be amended (Rule 17.05) or superseded (Rule 3.04, subd. 2), takes the place of the information under existing Minnesota law (Minn. Stat. §§ 628.29 – 629.33 (1971)) and provides the basis for the court's jurisdiction over the prosecution and the offenses charged in the complaint or the tab charge. Under Rule 4.02, subd. 5(3) a prosecution for a designated gross misdemeanor may be commenced by tab charge, but a complaint must be served and filed within 48 hours of the defendant's appearance on the tab charge if the defendant is in custody or within 10 days of the defendant's appearance on the tab charge if the defendant is not in custody. Therefore, if the separate Rule 8 appearance occurs later than those time limits, as will usually be the case, a complaint must have been served and filed for such a gross misdemeanor or prosecution to continue. However, if the Rule 5 and Rule 8 appearances were consolidated under Rule 5.03, it would be possible for the tab charge to still be effective at the time of the Rule 8 appearance.~~ ~~If the defendant pleads guilty the procedures provided by Rule 15 shall be followed.~~ ~~The defendant is not required to enter a plea upon the appearance in court under Rule 8. The defendant may, however, plead guilty.~~ ~~Under Rule 8.03, if the defendant does not plead guilty, and if the prosecution has given the notice prescribed by Rule 7.01 both the defendant and the prosecution shall be required to either waive or demand a Rasmussen (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 141 N.W.2d 3 (1965)) hearing. (Rule 8.03).~~	*If the Rasmussen hearing is demanded, the hearing must be held as part of the Omnibus Hearing as provided by Rule 11.02.* *The Omnibus Hearing must be commenced not later than 28 days after the defendant's initial appearance in court under Rule 8 unless the time is extended for good cause related to the particular case. See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.*

If the Rasmussen hearing is waived under Rule 8.03 by both the prosecution and the defense, the Omnibus Hearing provided by Rule 11 ~~shall~~must be held without a Rasmussen hearing. *If the Rasmussen hearing is demanded, the hearing ~~shall~~must be held as part of the Omnibus Hearing as provided by Rule 11.02.* *The Omnibus Hearing ~~shall~~must be commenced not later than 28 days after the defendant's initial appearance in court under Rule 8 unless the time is extended for good cause related to the particular case. ~~(Rule 8.04). If the time is extended, the Omnibus Hearing must still be completed and the issues decided within 30 days after the defendant's initial appearance before the court under Rule 8 unless extended by the Court for good cause related to the particular case. See Rules 11.04 and 11.07 and the comments to Rule 11.~~ See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.* ~~*Under Rule 8.01, if the offense charged in the complaint is punishable by life imprisonment, or if it is a homicide and the prosecuting attorney notifies the court the case will be presented to the grand jury, the defendant shall not be arraigned upon the complaint, and the case shall be presented to the grand jury as provided by Rule 8.01. If an indictment is returned, the Omnibus Hearing shall be held as provided by Rule 19.04, subd. 5.*~~ ~~*Rule 8.05 provides for a verbatim record of the proceedings under Rule 8.*~~ ~~*Under Rule 8.06 the court may in accordance with the provisions of Rule 6.02 continue or amend the bail or conditions of release set by the court previously.*~~	

Proposed Revisions to Minn. R. Crim. P. 9

Original Language Showing Markup	Proposed Revised Language
Rule 9. Discovery in Felony, and Gross Misdemeanor, and Misdemeanor Cases	**Rule 9. Discovery in Felony, Gross Misdemeanor, and Misdemeanor Cases**
Rule 9.01 Disclosure by Prosecution Disclosure in Felony and Gross Misdemeanor Cases	**Rule 9.01 Prosecution Disclosure in Felony and Gross Misdemeanor Cases**
Subd. 1. Disclosure by Prosecution Disclosure Without Court Order. of Court. Without order of court and except as provided in Rule 9.01, subd. 3, the prosecuting attorney onThe prosecutor must, at the defense's request of defense counsel shall,and before the Rule 11 Omnibus Hearing date set for Omnibus Hearing provided for by Rule 11, allow access at any reasonable time to all matters within the prosecuting attorney's prosecutor's possession or control whichthat relate to the case, except as provided in Rule 9.01, subd. 3, and make the following disclosures:	**Subd. 1. Prosecution Disclosure Without Court Order**. The prosecutor must, at the defense's request and before the Rule 11 Omnibus Hearing, allow access at any reasonable time to all matters within the prosecutor's possession or control that relate to the case, except as provided in Rule 9.01, subd. 3, and make the following disclosures:
(1) *Trial Witnesses; Other Persons; Grand Jury Witnesses*; Other Persons. (a) Trial Witnesses. The prosecuting attorney shall disclose to defense counsel the names and addresses of the persons intended towitnesses who may be called as witnesses at the trial, togetheralong with their prior record of convictions, if any, within the prosecuting attorney'sprosecutor's actual knowledge. The prosecuting attorney shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within the prosecuting attorney's knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents. (b) The fact that the prosecution has supplied the name of a trial witness to defense counsel shallmust not be commented onmake any comment in the jury's presence of the jurythat a name is on a witness list furnished by the prosecutor. (b) Other Persons. The names and	(1) *Trial Witnesses; Other Persons; Grand Jury Witnesses*. (a) Trial Witnesses. The names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within the prosecutor's actual knowledge. The defense must not make any comment in the jury's presence that a name is on a witness list furnished by the prosecutor. (b) Other Persons. The names and

addresses of anyone else with information relating to the case. (c) Grand Jury Witnesses. If the defendant ~~is~~has been charged by indictment, ~~the prosecuting attorney shall disclose to defense counsel~~ the names and addresses of the grand jury witnesses~~ who testified before the grand jury in the case against the defendant~~. ~~(d) The prosecuting attorney shall disclose to defense counsel the names and the addresses of persons having information relating to the case.~~ (2) *Statements*. ~~The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any relevant~~ Any of the following known to the prosecutor that relate to the case: (a) written or recorded statements~~ which relate to the case within the possession or control of the prosecution, the existence of which is known by the prosecuting attorney, and shall provide defense counsel with~~; (b) ~~the substance of any~~written summaries of oral statements~~ which relate to the case~~; (c) the substance of oral statements. The obligation to disclose the preceding types of statements applies whether or not the person who made the statement is listed as a witness. (3) *Documents and Tangible Objects*. ~~The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce~~ Any of the following that relate to the case: (a) books, ~~grand jury minutes or transcripts, law enforcement officer reports, reports on prospective jurors,~~ papers, documents~~,~~; (b) photographs; (c) law enforcement officer reports; (d) ~~and~~ tangible objects; (e) ~~which relate to the case and the prosecuting attorney shall also permit defense counsel to inspect and photograph~~ the location of buildings ~~or~~and places; (f) ~~which relate to the case~~grand jury	addresses of anyone else with information relating to the case. (c) Grand Jury Witnesses. If the defendant has been charged by indictment, the names and addresses of the grand jury witnesses. (2) *Statements*. Any of the following known to the prosecutor that relate to the case: (a) written or recorded statements; (b) written summaries of oral statements; (c) the substance of oral statements. The obligation to disclose the preceding types of statements applies whether or not the person who made the statement is listed as a witness. (3) *Documents and Tangible Objects*. Any of the following that relate to the case: (a) books, papers, documents; (b) photographs; (c) law enforcement officer reports; (d) tangible objects; (e) the location of buildings and places; (f) grand jury transcripts; (g) reports on prospective jurors.

transcripts; (g) reports on prospective jurors.	
(4) *Reports of Examinations and Tests* ~~and Other Expert Opinions~~. (a) The ~~prosecutor must disclose and permit defense counsel to inspect and reproduce any~~ results or reports of physical or mental examinations, scientific tests, experiments, or comparisons made ~~in connection with the particular~~that relate to the case.	(4) *Reports of Examinations and Tests*. (a) The results or reports of physical or mental examinations, scientific tests, experiments, or comparisons made that relate to the case.
(b) In addition, the prosecutor must allow the defendant to conduct reasonable tests. If a test or experiment, other than those conducted under Minn. Stat. Ch. 169A, might preclude any further tests or experiments, the prosecutor must give reasonable notice and opportunity to the defense so that a qualified expert may observe the test or experiment.	(b) In addition, the prosecutor must allow the defendant to conduct reasonable tests. If a test or experiment, other than those conducted under Minn. Stat. Ch. 169A, might preclude any further tests or experiments, the prosecutor must give reasonable notice and opportunity to the defense so that a qualified expert may observe the test or experiment.
(c) A person who will testify as an expert but who created no results or reports in connection with the ~~particular~~ case must provide to the prosecutor for disclosure to the defense ~~counsel~~ a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications. ~~The prosecutor must allow the defendant to have reasonable tests made. If a scientific test or experiment of any matter, except those conducted under Minn. Stat. Ch. 169, might preclude any further tests or experiments, the prosecutor must give the defendant reasonable notice and an opportunity to have a qualified expert observe the test or experiment.~~	(c) A person who will testify as an expert but who created no results or reports in connection with the case must provide to the prosecutor for disclosure to the defense a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.
(5) *Criminal Record*s *of Defendant and Defense Witnesses*. ~~The prosecuting attorney shall inform defense counsel of the records of prior~~The convictions records of the defendant and of any defense witnesses disclosed under Rule 9.02 subd. 1(3)(a) and (8) that are known to the ~~prosecuting attorney~~prosecutor, provided the defense ~~counsel~~ informs the ~~prosecuting attorney~~prosecutor of any ~~such~~of these records known to the defendant.	(5) *Criminal Records of Defendant and Defense Witnesses*. The conviction records of the defendant and of any defense witnesses disclosed under Rule 9.02, subd. 1(3)(a) and (8) that are known to the prosecutor, provided the defense informs the prosecutor of any of these records known to the defendant.
(6) *Exculpatory Information*. ~~The prosecuting attorney shall disclose to defense~~	(6) *Exculpatory Information*. Material or information in the prosecutor's possession and

~~counsel any~~ M~~m~~aterial or information ~~within~~in the ~~prosecuting attorney's~~prosecutor's possession and control that tends to negate or reduce the defendant's guilt ~~of the accused as to the offense charged~~.	control that tends to negate or reduce the defendant's guilt.
(7) *Evidence Relating to Aggravated Sentence*. ~~The prosecuting attorney shall disclose to the defendant or defense counsel all evidence not otherwise disclosed upon which~~ Evidence the prosecutor ~~intends to~~may rely on in seeking an aggravated sentence.	(7) *Evidence Relating to Aggravated Sentence*. Evidence the prosecutor may rely on in seeking an aggravated sentence.
Subd. 1a. Scope of Prosecutor's Obligations; Inspection, Reproduction, and Documentation	**Subd. 1a. Scope of Prosecutor's Obligations; Inspection, Reproduction, and Documentation**
(~~8~~1) *Scope of Prosecutor's Obligations*. The ~~prosecuting attorney's~~prosecutor's obligations under this rule extend to material and information in the possession or control of members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the ~~prosecuting attorney's~~prosecutor's office.	(1) *Scope of Prosecutor's Obligations*. The prosecutor's obligations under this rule extend to material and information in the possession or control of members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to the prosecutor's office.
(2) *Inspection, Reproduction, and Documentation*. The prosecutor must allow the defendant to inspect and reproduce any information required to be disclosed under this rule, as well as to inspect and photograph any object, place, or building required to be disclosed under this rule.	(2) *Inspection, Reproduction, and Documentation*. The prosecutor must allow the defendant to inspect and reproduce any information required to be disclosed under this rule, as well as to inspect and photograph any object, place, or building required to be disclosed under this rule.
Subd. 2. Discretionary Disclosure ~~Upon~~By Court Order ~~of Court~~.	**Subd. 2. Discretionary Disclosure By Court Order.**
(1) *Matters Possessed by Other Governmental Agencies*. ~~Upon~~ On the defendant's motion ~~of the defendant~~, the court for good cause ~~shown shall~~ must require the ~~prosecuting attorney~~prosecutor, except as provided by Rule 9.01, subd. 3, to assist the defendant in seeking access to specified matters relating to the case ~~which~~that are within the possession or control of an official or employee of any governmental agency, but ~~which are~~ not within the prosecutor's control ~~of the prosecuting attorney~~.	(1) *Matters Possessed by Other Governmental Agencies*. On the defendant's motion, the court for good cause must require the prosecutor, except as provided by Rule 9.01, subd. 3, to assist the defendant in seeking access to specified matters relating to the case that are within the possession or control of an official or employee of any governmental agency, but not within the prosecutor's control.
The ~~prosecuting attorney shall~~prosecutor must use diligent good faith	The prosecutor must use diligent good faith efforts to cause the official or employee to allow the defense reasonable access to inspect, photograph, copy, or have reasonable tests made.

efforts to cause the official or employee to allow the ~~defendant~~defense reasonable access ~~at any reasonable time and in any reasonable manner~~ to inspect, photograph, copy, or have reasonable tests made.

(2) *Nontestimonial Evidence from Defendant on Defendant's Motion*. ~~Upon motion of~~On the defendant's motion ~~who has been arrested, cited or charged under these rules~~, the court for good cause ~~shown~~ may require the ~~prosecuting attorney~~prosecutor to ~~provide for~~ permit the defendant to participate in a lineup, to speak for identification by witnesses, or to participate in other procedures ~~which would require a court order to accomplish~~.

(3) *Other Relevant Material*. ~~Upon~~On the defendant's motion ~~of the defendant~~, the trial court at any time before trial may, in its discretion, require the ~~prosecuting attorney~~prosecutor to disclose to defense counsel and to permit the inspection, reproduction, or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate ~~the~~ guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant ~~shall~~must inspect and preserve any ~~such~~ relevant material and information.

Subd. 3. ~~Information~~ Non-Discoverable Information. The following information ~~shall~~is not ~~be~~ discoverable by the defendant:

(1) *Work Product*.

(a) Opinions, Theories, or Conclusions. Unless otherwise provided by these rules, legal research, records, correspondence, reports, or memoranda to the extent ~~that~~ they contain the opinions, theories, or conclusions of the ~~prosecuting attorney~~prosecutor, ~~or members of~~ the ~~prosecution~~prosecutor's staff or officials, or official agencies participating in the prosecution.

(2) *Nontestimonial Evidence from Defendant on Defendant's Motion*. On the defendant's motion, the court for good cause may require the prosecutor to permit the defendant to participate in a lineup, to speak for identification by witnesses, or to participate in other procedures.

(3) *Other Relevant Material*. On the defendant's motion, the trial court at any time before trial may, in its discretion, require the prosecutor to disclose to defense counsel and to permit the inspection, reproduction, or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant must inspect and preserve any relevant material and information.

Subd. 3. Non-Discoverable Information. The following information is not discoverable by the defendant:

(1) *Work Product*.

(a) Opinions, Theories, or Conclusions. Unless otherwise provided by these rules, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the prosecutor, the prosecutor's staff or officials, or official agencies participating in the prosecution.

(b) *Reports*. Except as provided in Rules 9.01, subds. 1(1) to (67), reports, memoranda, or internal documents made by the prosecuting attorney prosecutor or members of the prosecution prosecutor's staff, or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.	(b) *Reports*. Except as provided in Rule 9.01, subds. 1(1) to (7), reports, memoranda, or internal documents made by the prosecutor or members of the prosecutor's staff, or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.
(2) *Prosecution Witnesses Under Prosecuting Attorney's Prosecutor's Certificate*. The information relative to concerning the witnesses and other persons described in Rules 9.01, subds. 1(1), and (2) shall is not be subject to disclosure if the prosecuting attorney prosecutor files a written certificate with the trial court that to do so may endanger the integrity of a continuing investigation or subject such witnesses or other persons or others to physical harm or coercion., provided, however, that Nnon-disclosure under this rule shall must not extend beyond the time the witnesses or persons are sworn to testify at the trial.	(2) *Prosecution Witnesses Under Prosecutor's Certificate*. The information concerning the witnesses and other persons described in Rule 9.01, subds. 1(1) and (2) is not subject to disclosure if the prosecutor files a written certificate with the trial court that to do so may endanger the integrity of a continuing investigation or subject witnesses or other persons to physical harm or coercion. Non-disclosure under this rule must not extend beyond the time the witnesses or persons are sworn to testify at the trial.
Rule 9.02 Disclosure by Defendant's Disclosure in Felony and Gross Misdemeanor Cases	**Rule 9.02 Defendant's Disclosure in Felony and Gross Misdemeanor Cases**
Subd. 1. Information Subject to Discovery Without Order of Court Order. Without order of court, the The defendant must, on at the prosecutor's request of the prosecuting attorney shall, and before the Rule 11 Omnibus Hearing, date set for the Omnibus Hearing provided for by Rule 11, make the following disclosures and permit the prosecutor to inspect and reproduce them:	**Subd. 1. Information Subject to Discovery Without Court Order**. The defendant must, at the prosecutor's request and before the Rule 11 Omnibus Hearing, make the following disclosures and permit the prosecutor to inspect and reproduce them:
(1) *Documents and Tangible Objects*. The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce Any of the following the defense intends to introduce at trial: (a) books, papers, documents,; (b) photographs,; (c) and tangible objects; (d) which the defendant intends to introduce in evidence at the trial or concerning which the defendant intends to offer evidence	(1) *Documents and Tangible Objects*. Any of the following the defense intends to introduce at trial: (a) books, papers, documents; (b) photographs; (c) tangible objects; (d) the locations of buildings and places concerning which the defendant intends to offer evidence. As to this disclosure, the defense must

~~at the trial, and shall also permit the prosecuting attorney to inspect and reproduce reports on prospective jurors and to inspect and photograph~~ the locations of buildings ~~or~~and places concerning which the defendant intends to offer evidence ~~at trial~~. As to this disclosure, the defense must also permit photographing; (e) without regard to use at trial, any reports on prospective jurors.	also permit photographing; (e) without regard to use at trial, any reports on prospective jurors.
(2) *Reports of Examinations and Tests* ~~and Other Expert Opinions~~. ~~The defendant must disclose and permit the prosecutor to inspect and reproduce any~~ (a) Any of the following results or reports the defense intends to introduce at trial that were made in connection with the case and are within the defense's possession or control, or were prepared by a witness the defense intends to call at trial, when the results and reports are of: (i) physical or mental examinations~~,~~; (ii) scientific tests, experiments, ~~and~~or comparisons ~~made in connection with the particular case within the possession or control of the defendant that the defendant intends to introduce in evidence at the trial or that were prepared by a witness the defendant intends to call at the trial when the results or reports relate to testimony of the witness~~.	(2) *Reports of Examinations and Tests*. (a) Any of the following results or reports the defense intends to introduce at trial that were made in connection with the case and are within the defense's possession or control, or were prepared by a witness the defense intends to call at trial, when the results and reports are of: (i) physical or mental examinations; (ii) scientific tests, experiments, or comparisons.
(b) In addition, ~~A~~a person who will testify as an expert but who created no results or reports in connection with the ~~particular~~ case must provide to the defense ~~counsel~~ for disclosure to the prosecutor a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.	(b) In addition, a person who will testify as an expert but who created no results or reports in connection with the case must provide to the defense for disclosure to the prosecutor a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.
(3) *Notice of ~~Defense and~~ Defense Witnesses ~~and Criminal Record~~*. (a) ~~Notice of Defense. The defendant shall inform the prosecuting attorney in writing of any defense, other than that of not guilty, on which the defendant intends to rely at the trial, including but not limited to the defense of self-defense, entrapment, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel,~~	(3) *Notice of Defense Witnesses*. (a) The names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within the defendant's actual knowledge. The prosecutor must not make any comment in the jury's presence that a name is on a witness list furnished by the defendant.

~~defense under Minn. Stat. § 609.035, or intoxication.~~ The ~~defendant shall supply the prosecuting attorney with the~~ names and addresses of ~~persons whom the defendant intends to call as~~ witnesses who may be called at ~~the~~ trial, ~~together~~along with their record of convictions, if any, within the defendant's actual knowledge. The prosecutor must not make any comment in the jury's presence that a name is on a witness list furnished by the defendant. ~~A defendant who gives notice of intent to rely on the defense of mental illness or mental deficiency shall also notify the prosecuting attorney of any intent to additionally rely on the defense of not guilty.~~	
(~~b~~4) *Statements of Defense and Prosecution Witnesses*. (a) ~~The defendant must permit the prosecutor to inspect and reproduce any relevant~~Relevant written or recorded statements of the persons the defendant intends to call ~~as witnesses~~ at ~~the~~ trial; (b) ~~and also statements~~Statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense~~, and that are~~ within the defendant's possession or control ~~of the defendant,~~; (c) ~~and must permit the prosecutor to inspect and reproduce any written~~ Written summaries ~~within the defendant's knowledge~~ known to the defense of the substance of any oral statements made by ~~such~~prosecution witnesses to defense counsel or persons participating in the defense, or obtained by the defendant at the defense counsel's direction ~~of defense counsel~~. (d) The ~~defendant must provide the prosecuting attorney with the~~ substance of any oral statements ~~by persons the defendant intends to call as witnesses at the trial~~ that relate to the case made by persons the defendant intends to call as witnesses at trial, and that were made to defense counsel or persons participating in the defense. (e) Statements Not Subject to Disclosure.	(4) *Statements of Defense and Prosecution Witnesses*. (a) Relevant written or recorded statements of the persons the defendant intends to call at trial; (b) Statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense within the defendant's possession or control; (c) Written summaries known to the defense of the substance of any oral statements made by prosecution witnesses to defense counsel or persons participating in the defense, or obtained by the defendant at the defense counsel's direction. (d) The substance of any oral statements that relate to the case made by persons the defendant intends to call as witnesses at trial, and that were made to defense counsel or persons participating in the defense. (e) Statements Not Subject to Disclosure.

~~This provision does not require disclosure of the~~ The defendant is not required to disclose statements made by the defendant to defense counsel or agents of defense counsel that are protected by the attorney-client privilege or by state or federal constitutional guarantees.

(5) *Notice of defense*

The defense must inform the prosecutor in writing of any defense, other than not guilty, that the defendant intends to assert, including but not limited to:

- self-defense;
- entrapment;
- mental illness or deficiency;
- duress;
- alibi;
- double jeopardy;
- statute of limitations;
- collateral estoppel;
- defense under Minn. Stat. § 609.035;
- intoxication.

A defendant who gives notice of intent to assert the defense of mental illness or mental deficiency must also notify the prosecutor of any intent to also assert the defense of not guilty.

(6) *Entrapment.*

(a) If the defendant intends to offer evidence of entrapment, the defendant must inform the prosecutor of the facts supporting the defense, and elect to submit the defense to the court or jury.

(b) The entrapment defense may be submitted to the court only if the defendant waives a jury trial on that issue as provided in Rule 26.01, subd. 1(2).

(c) If the defendant submits entrapment to the court, the hearing on entrapment must be included in the Omnibus Hearing under Rule 11 or in the evidentiary hearing under Rule 12. The court must make findings of fact and conclusions of law on the record supporting its decision.

(~~e~~7) *Alibi*. If the defendant intends to

The defendant is not required to disclose statements made by the defendant to defense counsel or agents of defense counsel that are protected by the attorney-client privilege or by state or federal constitutional guarantees.

(5) *Notice of defense*

The defense must inform the prosecutor in writing of any defense, other than not guilty, that the defendant intends to assert, including but not limited to:

- self-defense;
- entrapment;
- mental illness or deficiency;
- duress;
- alibi;
- double jeopardy;
- statute of limitations;
- collateral estoppel;
- defense under Minn. Stat. § 609.035;
- intoxication.

A defendant who gives notice of intent to assert the defense of mental illness or mental deficiency must also notify the prosecutor of any intent to also assert the defense of not guilty.

(6) *Entrapment*.

(a) If the defendant intends to offer evidence of entrapment, the defendant must inform the prosecutor of the facts supporting the defense, and elect to submit the defense to the court or jury.

(b) The entrapment defense may be submitted to the court only if the defendant waives a jury trial on that issue as provided in Rule 26.01, subd. 1(2).

(c) If the defendant submits entrapment to the court, the hearing on entrapment must be included in the Omnibus Hearing under Rule 11 or in the evidentiary hearing under Rule 12. The court must make findings of fact and conclusions of law on the record supporting its decision.

(7) *Alibi*. If the defendant intends to offer

offer evidence of an alibi, the defendant ~~shall also~~must inform the ~~prosecuting attorney~~prosecutor of:

(a) the specific place or places where the defendant ~~contends to have been~~was when the alleged offense occurred;

(b) ~~and shall inform the prosecuting attorney of~~ the names and addresses of the witnesses the defendant intends to call at the trial in support of the alibi.

As soon as practicable, the ~~prosecuting attorney~~prosecutor ~~shall~~must then inform the defendant of the names and addresses of the witnesses the ~~prosecuting attorney~~ prosecutor intends to call at ~~the~~ trial to rebut the testimony of any of the defendant's alibi witnesses.

(~~d~~8) *Criminal Record*. ~~Defense counsel shall~~ The defendant must inform the ~~prosecuting attorney~~prosecutor of any ~~prior~~ convictions ~~of~~ the defendant has, provided the ~~prosecuting attorney~~prosecutor informs the defense ~~counsel~~ of the defendant's record of ~~prior~~ convictions known to the ~~prosecuting attorneys~~prosecutor.

~~(e) Entrapment. A defendant who gives notice of intention to rely on the defense of entrapment, shall include in the notice a statement of the facts forming the basis for the defense, and elect whether to have the defense submitted to the court or to the jury.~~

~~The entrapment defense may not be submitted to the court unless the defendant waives jury trial upon that issue as provided by Rule 26.01, subd. 1(2).~~

~~If the entrapment defense is submitted to the court, the hearing thereon shall be included in the Omnibus Hearing under Rule 11 or in the evidentiary hearing provided for by Rule 12. The court shall make findings of fact and conclusions of law on the record supporting its decision.~~

Subd. 2. Discovery ~~Upon~~ by Court Order ~~of Court~~.

(1) *Disclosures Permitted.* ~~Upon~~ On the prosecutor's motion, ~~of the prosecuting~~

evidence of an alibi, the defendant must inform the prosecutor of:

(a) the specific place or places where the defendant was when the alleged offense occurred;

(b) the names and addresses of the witnesses the defendant intends to call at the trial in support of the alibi.

As soon as practicable, the prosecutor must then inform the defendant of the names and addresses of the witnesses the prosecutor intends to call at trial to rebut the testimony of any of the defendant's alibi witnesses.

(8) *Criminal Record*. The defendant must inform the prosecutor of any convictions the defendant has, provided the prosecutor informs the defense of the defendant's record of convictions known to the prosecutor.

Subd. 2. Discovery by Court Order.

(1) *Disclosures Permitted*. On the prosecutor's motion, with notice to the defense and a showing that one or more of the discovery

~~attorney~~ with notice to the defense ~~counsel~~ and a showing that one or more of the discovery procedures ~~hereafter~~ described below will ~~be of~~ materially aid in determining whether the defendant committed the offense charged, the ~~trial~~ court ~~at any time~~ before trial may, subject to constitutional limitations, order a defendant to:	procedures described below will materially aid in determining whether the defendant committed the offense charged, the court before trial may, subject to constitutional limitations, order a defendant to:
(a) Appear in a lineup;	(a) Appear in a lineup;
(b) Speak for the purpose of voice identification ~~by witnesses to an offense~~ or for ~~the purpose of~~ taking voice prints;	(b) Speak for the purpose of voice identification or for taking voice prints;
(c) ~~Be~~ Permit finger, palm, or ~~fingerprinted or permit the defendant's palm prints or footprints to be taken~~ foot-printing;	(c) Permit finger, palm, or foot-printing;
(d) Permit ~~measurements of the defendant's~~ body ~~to be taken~~ measurements;	(d) Permit body measurements;
(e) Pose for photographs not involving re-enactment of a scene;	(e) Pose for photographs not involving re-enactment of a scene;
(f) Permit the taking of ~~samples of the defendant's~~ blood, hair, saliva, urine, ~~and~~ or samples of other bodily materials ~~of the defendant's body which~~ that do not involve ~~no unreasonable intrusion thereof;~~ unreasonable intrusion, ~~provided, however, that~~ but the court ~~shall~~ must not permit a blood ~~test~~ sample to be taken except ~~up~~on a showing of probable cause to believe that the test will aid in establishing the defendant's guilt ~~of the defendant~~;	(f) Permit the taking of blood, hair, saliva, urine, or samples of other bodily materials that do not involve unreasonable intrusion, but the court must not permit a blood sample to be taken except on a showing of probable cause to believe that the test will aid in establishing the defendant's guilt;
(g) Provide specimens of the defendant's handwriting; and	(g) Provide specimens of the defendant's handwriting; and
(h) Submit to reasonable physical or medical inspection ~~of the defendant's body~~.	(h) Submit to reasonable physical or medical inspection.
(2) *Notice of Time and Place of Disclosures*. ~~Whenever the personal appearance of the defendant is required for the foregoing purposes,~~ The prosecutor must give the defense reasonable notice of the time and place ~~thereof shall be given by the prosecuting attorney to defense counsel~~the defendant must appear for any discovery purpose listed above.	(2) *Notice of Time and Place of Disclosures*. The prosecutor must give the defense reasonable notice of the time and place the defendant must appear for any discovery purpose listed above.
(3) *Medical Supervision*. Blood tests ~~shall~~must be conducted under medical supervision., ~~and the~~ The court may require medical supervision for any other test ordered ~~pursuant to~~under this rule. ~~when the court deems such supervision necessary. Upon~~ On the defendant's motion ~~of the defendant~~, the	(3) *Medical Supervision*. Blood tests must be conducted under medical supervision. The court may require medical supervision for any other test ordered under this rule. On the defendant's motion, the court may delay the defendant's appearance for a reasonable time, or may order that it take place at the defendant's

court may ~~order~~delay the defendant's appearance ~~delayed~~ for a reasonable time, or may order that it take place at the defendant's residence, or some other convenient place.	residence, or some other convenient place.
(4) *Notice of Results of Disclosure*. ~~Unless otherwise ordered by the court, the~~ The prosecutor ~~prosecuting attorney, within five (5) days from the date the results of the discovery procedures provided by this rule become known, shall make available to defense counsel a report of the results~~must tell the defense the results of the procedures within 5 days of learning the result, unless the court orders otherwise.	(4) *Notice of Results of Disclosure*. The prosecutor must tell the defense the results of the procedures within 5 days of learning the result, unless the court orders otherwise.
(5) *Other Methods Not Excluded*. The discovery procedures provided ~~for by~~in this rule do not exclude other lawful methods available for obtaining the evidence discoverable under ~~the~~this rule.	(5) *Other Methods Not Excluded*. The discovery procedures provided in this rule do not exclude other lawful methods available for obtaining the evidence discoverable under this rule.
Subd. 3. Information Not Subject to Disclosure by Defendant; Work Product. Unless ~~otherwise provided by~~ these rules direct otherwise, legal research, records, correspondence, reports, or memoranda, to the extent they contain the opinions, theories, or conclusions of the defendant or defense counsel or persons participating in the defense, are not subject to disclosure.	**Subd. 3. Information Not Subject to Disclosure by Defendant; Work Product**. Unless these rules direct otherwise, legal research, records, correspondence, reports, or memoranda, to the extent they contain the opinions, theories, or conclusions of the defendant or defense counsel or persons participating in the defense, are not subject to disclosure.
~~**Subd. 4. Failure to Call Witness.** The fact that a witness' name is on a list furnished by defendant to the prosecution under this rule shall not be commented on in the presence of the jury.~~	
Rule 9.03 Regulation of Discovery	**Rule 9.03 Regulation of Discovery**
Subd. 1. Investigations Not to be Impeded. ~~Except as otherwise provided as to matters not subject to discovery or covered by protective orders, neither the counsel~~ Counsel for the parties ~~nor~~ and other prosecution or defense personnel ~~shall advise~~ must not tell ~~persons having~~ anyone with relevant ~~material or~~ information (except the accused) not to ~~refrain from discussing~~ discuss the case with opposing counsel, or ~~not to from showing~~ show opposing counsel ~~any~~ relevant material~~s, nor~~	**Subd. 1. Investigations Not to be Impeded**. Counsel for the parties and other prosecution or defense personnel must not tell anyone with relevant information (except the accused) not to discuss the case with opposing counsel, or not to show opposing counsel relevant material, or otherwise impede opposing counsel's investigation of the case. This rule does not apply to matters not subject to discovery under this rule or that are covered by a protective order.

~~shall they~~ or otherwise impede opposing counsel's investigation of the case. This rule does not apply to matters not subject to discovery under this rule or that are covered by a protective order.	
Subd. 2. Timely Disclosure and Continuing Duty to Disclose. (a) All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.	**Subd. 2. Timely Disclosure and Continuing Duty to Disclose**. (a) All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.
(~~a~~b) If, ~~subsequent to~~after compliance with any discovery rules or orders, a party discovers additional material, information, or witnesses subject to disclosure, that party ~~shall~~must promptly notify the other party of ~~the existence of the additional material or information and the identity of the witnesses.~~ what it has discovered and disclose it.	(b) If, after compliance with any discovery rules or orders, a party discovers additional material, information, or witnesses subject to disclosure, that party must promptly notify the other party of what it has discovered and disclose it.
(~~b~~c) Each party ~~shall have~~has a continuing duty ~~at all times~~of disclosure before and during trial ~~to supply the materials and information required by these rules~~.	(c) Each party has a continuing duty of disclosure before and during trial.
Subd. 3. Time, Place, and Manner of Discovery and Inspection. A~~n order of the~~ court granting discovery ~~shall~~must specify the time, place, and manner of ~~making the~~ discovery, ~~and inspection permitted~~ and may ~~prescribe such~~impose reasonable terms and conditions ~~as are just~~.	**Subd. 3. Time, Place, and Manner of Discovery and Inspection**. A court granting discovery must specify the time, place, and manner of discovery, and may impose reasonable terms and conditions.
Subd. 4. Custody of Materials. ~~Any M~~materials furnished to a~~n attorney~~ party under discovery rules or orders ~~shall~~must remain in the party's custody ~~of~~ and be used by the ~~attorney~~ party only ~~for the purpose of~~ to conduct~~ing~~ that attorney's side of the case, and ~~shall~~ may be subject to ~~such~~ other ~~terms and~~ conditions ~~as~~ the court ~~may prescribe~~ orders.	**Subd. 4. Custody of Materials.** Materials furnished to a party under discovery rules or orders must remain in the party's custody and be used by the party only to conduct that attorney's side of the case, and may be subject to other conditions the court orders.
Subd. 5. Protective Orders. ~~Upon a showing of cause, the trial~~ The court may ~~at any time~~ order ~~that specified~~ disclosures ~~be~~ restricted, ~~or~~ deferred, or ~~make such other order as is appropriate~~made subject to other	**Subd. 5. Protective Orders.** The court may order disclosures restricted, deferred, or made subject to other conditions.

conditions. ~~All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.~~	
Subd. 6. In Camera Proceedings. ~~Upon application of~~ On any party's motion, with notice to the ~~adverse~~other ~~party,~~ parties, the ~~trial~~ court ~~upon a showing of~~for good cause ~~therefor~~ may ~~permit any showing of cause for denial or regulation of discovery, or portion of such showing,~~ order a discovery motion to be made in camera. A record ~~shall~~must be made ~~of the proceedings~~. If the court ~~enters an~~ orders ~~granting relief following a showing in~~an in camera hearing, the entire record of ~~such showing~~the motion ~~shall~~must be sealed and preserved in the court's records, ~~of the court, to~~and be ~~made~~ available to ~~the~~ reviewing courts ~~in the event of an appeal, habeas corpus proceedings, or post-conviction proceedings under Minn. Stat. §§ 590.01-590.06 (1971)~~.	**Subd. 6. In Camera Proceedings**. On any party's motion, with notice to the other parties, the court for good cause may order a discovery motion to be made in camera. A record must be made. If the court orders an in camera hearing, the entire record of the motion must be sealed and preserved in the court's records, and be available to reviewing courts.
Subd. 7. Excision. When ~~some~~ parts of ~~certain~~ materials are discoverable under these rules~~,~~ and other parts are not ~~discoverable~~, ~~as much of the material shall~~the discoverable portions must be disclosed ~~as is consistent with discovery rules~~. Material excised ~~pursuant to~~under judicial order ~~shall~~must be sealed and ~~preserved in the records of the court to~~ be made available to ~~the~~ reviewing courts ~~in the event of an appeal, habeas corpus proceeding, or post-conviction proceedings under Minn. Stat. §§ 590.01-590.06 (1971)~~.	**Subd. 7. Excision**. When parts of materials are discoverable under these rules and other parts are not, the discoverable portions must be disclosed. Material excised under judicial order must be sealed and be made available to reviewing courts.
Subd. 8. Sanctions. ~~If at any time it is brought to the attention of the trial court that~~ a party ~~has failed~~ fails to comply with a~~n applicable~~ discovery rule or order, the court may, ~~upon~~ notice and motion ~~and notice~~, order ~~such~~the party to permit the discovery ~~or inspection~~, grant a continuance, or enter ~~such~~any order ~~as~~ it deems just in the circumstances. Any person who willfully disobeys a court's discovery order ~~under these discovery rules~~ may be held in	**Subd. 8. Sanctions**. If a party fails to comply with a discovery rule or order, the court may, on notice and motion, order the party to permit the discovery, grant a continuance, or enter any order it deems just in the circumstances. Any person who willfully disobeys a court's discovery order may be held in contempt.

contempt.

Subd. 9. Filing.

Unless the court ~~orders~~directs otherwise~~ for the purpose of a hearing or trial~~, discovery disclosures made ~~pursuant to~~under Rule 9 ~~shall~~ are not subject ~~be filed under~~to the ~~provisions of~~filing requirements in Rule 33.04.

The party making ~~the~~ disclosures ~~shall~~must prepare an itemized descriptive list identifying the disclosures but without disclosing their contents, and ~~shall~~must file the list as provided by Rule 33.04.

Subd. 10. Reproduction.

When~~ever a party has~~ an obligation exists to permit reproduction of a report, statement, document, or other tangible thing~~,~~ discoverable under this rule, ~~that obligation~~it may be satisfied by any method that provides~~ to the other party~~ an exact reproduction~~ of that item~~, including ~~E~~e-mail, facsimile ~~transmission~~, or similar method if ~~that method is~~ available to both parties. ~~A reasonable charge may be made to cover the actual costs of reproduction, except that no charge may be assessed to a defendant represented by the public defender or by an attorney working for a public defense corporation under Minn. Stat. § 611.216 or to a defendant determined by the court to be financially unable to obtain counsel pursuant to Rule 5.02.~~

Rule 9.04 Discovery in Misdemeanor Cases

In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including e-mail,

Subd. 9. Filing.

Unless the court directs otherwise, discovery disclosures made under Rule 9 are not subject to the filing requirements in Rule 33.04.

The party making disclosures must prepare an itemized descriptive list identifying the disclosures but without disclosing their contents, and must file the list as provided by Rule 33.04.

Subd. 10. Reproduction.

When an obligation exists to permit reproduction of a report, statement, document, or other tangible thing discoverable under this rule, it may be satisfied by any method that provides an exact reproduction, including e-mail, facsimile, or similar method if available to both parties.

Rule 9.04 Discovery in Misdemeanor Cases

In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including e-mail, facsimile, or

facsimile, or similar method if available to both parties.

9.05 Charges and Exemptions for Reproduction of Discovery in all Cases

A reasonable charge may be made to cover the actual costs of reproduction, but no charges may be assessed to a defendant who is:

(1) represented by the public defender or by an attorney working for a public defense corporation under Minn. Stat. § 611.216; or

(2) determined by the court under Rule 5.02~~3~~4 to be financially unable to obtain counsel.

Comment—Rule 9

Rule 9, with Rules 7.01, 19.04, subd. 6~~(1) (Rasmussen notice of evidence obtained from the defendant and of identification procedures), Rules 7.02, 19.04, subd. 6(2) (Spreigl notice of additional offenses to be offered at trial)~~, and ~~Rule~~ 18.0~~4~~5, subds. 1 and 2 (recorded testimony of grand jury witnesses), provide a comprehensive method of discovery ~~by~~of the prosecution (Rule 9.01) and ~~defendant~~defense (Rule 9.02) cases. The rules are intended to give the ~~defendant and prosecution~~parties ~~as~~ complete discovery ~~as is possible under~~subject to constitutional limitations.

~~It is the~~The object of the rules ~~that these~~ is to complete discovery procedures ~~shall be completed~~ so far as possible by ~~the time of~~ the Omnibus Hearing under Rule 11, which will be held within 42 days after the defendant's first appearance in court following a complaint under Rule 5, where the Rule 5 and Rule 8 appearances are not consolidated, or within ~~14~~7 days after the first appearance in district court following an indictment (Rule 19.04), and that all issues arising from the discovery process, including the need for additional discovery, will be resolved at the Omnibus Hearing (Rules 11.04; 9.01, subd. 2; 9.03, subd. 8).

~~While a pre-trial conference originally was not specifically provided for by these rules~~

similar method if available to both parties.

9.05 Charges and Exemptions for Reproduction of Discovery in all Cases

A reasonable charge may be made to cover the actual costs of reproduction, but no charges may be assessed to a defendant who is:

(1) represented by the public defender or by an attorney working for a public defense corporation under Minn. Stat. § 611.216; or

(2) determined by the court under Rule 5.04 to be financially unable to obtain counsel.

Comment—Rule 9

Rule 9, with Rules 7.01, 19.04, subd. 6, and 18.04, subds. 1 and 2 (recorded testimony of grand jury witnesses), provide a comprehensive method of discovery of the prosecution (Rule 9.01) and defense (Rule 9.02) cases. The rules are intended to give the parties complete discovery subject to constitutional limitations.

The object of the rules is to complete discovery procedures so far as possible by the Omnibus Hearing under Rule 11, which will be held within 42 days after the defendant's first appearance in court following a complaint under Rule 5, where the Rule 5 and Rule 8 appearances are not consolidated, or within 7 days after the first appearance in district court following an indictment (Rule 19.04), and that all issues arising from the discovery process, including the need for additional discovery, will be resolved at the Omnibus Hearing (Rules 11.04; 9.01, subd. 2; 9.03, subd. 8).

Rule 9.01, subd. 1 provides generally for access by defense counsel to unprotected materials in the prosecution file, and also for numerous specific disclosures that must be made by the prosecutor on defense request. The general "open file" policy established by the rule is based on Unif.R.Crim.P. 421(a) (1987). Of course, this "open file" policy does not require the prosecuting attorney to give defense counsel access to any information that would be deemed non-

~~*(Compare ABA Standards, Discovery and Procedure Before Trial, 5.4 (Approved Draft, 1970) containing a specific provision for a pre-trial conference), Rule 11.04 now expressly permits the court in its discretion to hold a pre-trial dispositional conference as a part of the Omnibus Hearing if it determines there is a need for it. (See F.R.Crim.P. 17.1.)*~~

~~*Rule 9.01, subd. 1 provides for the disclosures that shall be made before the Omnibus Hearing by the prosecution upon request of the defense without an order of court. As to the prosecution's duty to disclose under the rule see State v. Smith, 313 N.W.2d 429 (Minn.1981), State v. Zeimet, 310 N.W.2d 552 (Minn.1981), State v. Schwantes, 314 N.W.2d 243 (Minn.1982), and State v. Hall, 315 N.W.2d 223 (Minn.1982).*~~

Rule 9.01, subd. 1 provides generally for access by defense counsel to unprotected materials in the prosecution file, and also for numerous specific disclosures ~~which~~that must be made by the prosecuting attorney ~~up~~on defense request ~~of defense counsel~~. The general "open file" policy established by the rule is based on Unif.R.Crim.P. 421(a) (1987). Of course, this "open file" policy does not require the prosecutor~~prosecuting attorney~~ to give defense counsel access to any information that would be deemed non-discoverable under Rule 9.01, subd. 3.

~~No~~ Rule 9.01 does not require any specific form of request ~~is required by Rule 9.01, subd. 1~~. It is anticipated that the discovery provided for by Rule 9.01, subd. 1, as well as the disclosures required of the defense by Rule 9.02 without order of court, will be accomplished informally between the ~~prosecuting attorney~~prosecutor and defense counsel~~. (See ABA Standards, Discovery and Procedure Before Trial, 1.3(a), 1.4(b) (Approved Draft, 1970).)~~

~~*Rule 9.01, subd. 1(1)(a), providing for the discovery of the prosecution's trial witnesses, with their written or recorded*~~ *discoverable under Rule 9.01, subd. 3.*

Rule 9.01 does not require any specific form of request. It is anticipated that the discovery provided for by Rule 9.01, subd. 1, as well as the disclosures required of the defense by Rule 9.02 without order of court, will be accomplished informally between the prosecutor and defense counsel

Rule 9.01, subd. 1(1)(a), forbidding comment to the jury on the fact that a person was named on the list of prosecution witnesses, is not intended to affect any right defense counsel may have under existing law to comment concerning the prosecution's failure to call a particular witness, but prevents defense counsel from commenting that the witness was on the prosecution's list.

Rule 9.01, subd. 1(3)(f) permits the defendant to obtain grand jury transcripts possessed by the prosecutor. If the defendant wants portions of the grand jury record not yet transcribed or possessed by the prosecutor, a request must be made under Rule 18.05.

Rule 9.01, subd. 1(4) permits discovery of reports of examinations and tests. If a test or experiment done by the prosecution does not destroy the evidence and preclude further tests or experiments, it is not necessary under this rule to notify the defendant or to allow a defense expert to observe the test or experiment.

Rule 9.01, subd. 1(5) provides for the reciprocal discovery of the criminal records of any defense witness disclosed to the prosecution under Rule 9.02, subd. 1(3). Under Rule 9.03, subd. 2 a continuing duty exists to disclose this information through trial. If the prosecutor intends to impeach the defendant or any defense witnesses with evidence of prior convictions the prosecutor is required by State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn.1980) to request a pretrial hearing on the admissibility of this evidence under the Rules of Evidence. The pretrial hearing may be made a part of the Omnibus Hearing under Rule 11 or the pretrial

~~*statements and written summaries of oral statements, and their criminal records, substantially follows ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(i)(ii)(vi) (Approved Draft, 1970) and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(a)(i)(vi) (1970) (48 F.R.D. 553, 587-589). The policy of this rule is to permit discovery of "written and recorded statements in whatever form they may have been preserved". (See Comments ABA Standards, Discovery and Procedure Before Trial, 2.1, p. 62 (Approved Draft, 1970).)*~~

~~*Discovery under Rule 9.01, subd. 1(1)(a) is subject to the provisions of Rule 9.01, subd. 3(2) (prosecutor's certificate for the protection of witnesses) and Rule 9.03, subd. 5 (protective orders).*~~

Rule 9.01, subd. 1(1)(~~b~~a), forbidding comment to the jury on the fact that a person was named on the list of prosecution witnesses, is ~~taken from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(4) (1970) (48 F.R.D. 553, 590). This rule is~~ not intended to affect any right defense counsel may have ~~by~~under existing law to comment ~~on the fact that~~concerning the prosecution~~'s has failed~~failure to call a particular witness, but prevents defense counsel from commenting ~~on the fact~~ that the witness was on the prosecution's list.

~~*Rule 9.01, subd. 1(1)(c), requiring the prosecution to disclose the names and addresses of grand jury witnesses, is in accord with the requirements of existing law (Minn. Stat. § 628.08 (1971)). Rule 18.05, subd. 2 provides the method for discovery of their grand jury testimony. (This follows substantially the recommendations of ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iii) (Approved Draft, 1970).)*~~

~~*Rule 9.01, subd. 1(1)(d) requiring the disclosure of the names of all persons having information related to the case is taken from Unif.R.Crim.P. 421(a) (1987). Additionally,*~~ *conference under Rule 12.*

Rule 9.01, subd. 1(7) requires the prosecutor to disclose to the defendant or defense counsel all evidence not otherwise disclosed on which the prosecutor intends to rely in seeking an aggravated sentence under Blakely v. Washington, 542 U.S. 296 (2004).

The requirement under Rule 9.01, subd. 1(3)(g) to disclose reports on prospective jurors does not require disclosure of opinions or conclusions concerning jurors given by persons assisting counsel on the case. Such material would be protected as work product under Rule 9.02, subd. 3.

The provision in Rule 9.02 subd. 1(4)(d) that defense counsel and the defendant disclose the substance of any oral statements obtained from persons whom the defendant intends to call at the trial is not intended to support a claim that if counsel or the defendant interviewed the witness without a third party present that defense counsel can be disqualified in order to permit counsel to testify to any discrepancy between the oral statement disclosed and the witness's trial testimony, or that if the defendant declines to testify to the discrepancy that the witness's testimony should be stricken. Other solutions should be sought, such as stipulating that in the interview that counsel or the defendant conducted, the witness made the statement the prosecutor now seeks to impeach.

Rule 9.02, subd. 1(5) requires written notice of any defense—other than not guilty—on which the defendant intends to rely at the trial, along with the names and addresses of the witnesses the defendant intends to call at the trial. The defendant is not required to indicate the witnesses intended to be used for each defense except for the defense of alibi (Rule 9.02, subd. 1(7)).

Rule 9.02, subd. 2 regulates orders for nontestimonial identification or other procedures. This rule applies after a defendant has been charged. Precharging nontestimonial procedures are usually accomplished by search warrant.

~~*the other specific items required to be disclosed by Unif.R.Crim.P. 421(a) (1987) are included in Rule 9.01, subd. 1.*~~

~~*Rule 9.01, subd. 1(2), as originally promulgated followed substantially ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(ii) (Approved Draft, 1970). As revised it is in accord with Unif.R.Crim.P. 421(a) and requires the disclosure of written or recorded statements of all persons (whether or not the statements will be offered in evidence) and also requires disclosure of the substance of any oral statements which relate to the case.*~~

~~*Rule 9.01, subd. 1(2) differs from ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(ii) (Approved Draft, 1970) in that the rule covers the written or recorded statements of accomplices and co-defendants whether or not they are to be tried jointly with the defendant.*~~

~~*Rule 9.01, subd. 1(3), providing for discovery of documents and tangible objects, was originally taken from ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(v) (Approved Draft, 1970), Fed.R.Crim.P. 16(6), and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(iv) (1970), 48 F.R.D. 553, 588 to 599. It has been broadened based on Unif.R.Crim.P. 421(a) (1987) to include grand jury minutes or transcripts, law enforcement officer reports, and reports on prospective jurors. Additionally, the items which must be disclosed need only relate to the case, whether or not the prosecuting attorney intends to offer evidence about them at trial. This rule*~~ *Rule 9.01, subd. 1(3)(f) permits the defendant to obtain ~~from the prosecuting attorney~~ grand jury transcripts possessed by the prosecutor~~prosecuting attorney~~. If the defendant wants portions of the grand jury record not yet transcribed or possessed by the~~ prosecuting attorney~~ prosecutor, a request must be made~~, it is necessary to request that of the court~~ under Rule 18.05~~ and to meet the standards under that rule~~.*

Following the charging of a felony or gross misdemeanor, the order may be obtained at the first appearance of the defendant under Rules 4.02, subd. 5(1), and Rule 5, or at or before the Omnibus Hearing under Rule 11. The order may be obtained from the district court at any time before trial, but preferably at or before the Omnibus Hearing.

In making protective orders under Rule 9.03, subd. 5 or in ruling on motions to compel discovery under Rules 9.01, subd. 2, and 9.03, subd. 8, the court may avail itself of Rule 9.03, subds. 6 and 7 authorizing in camera proceedings and excision.

Under Rule 9.04 the prosecutor should reveal not only the reports physically in the prosecutor's possession, but also those concerning the case that are in the possession of the police.

In those rare cases where additional discovery is considered necessary by either party, it shall be by consent of the parties or by motion to the court. In such cases it is expected that the parties and the court will be guided by the extensive discovery provisions of these rules. Rule 9 provides guidelines for deciding any such motions, but they are not mandatory and the decision is within the discretion of the district court judge. State v. Davis, 592 N.W.2d 457, 459 (Minn. 1999).

Under Rule 9.05, the provision of the rule permitting free copies to public defenders and attorneys working for a public defense corporation under Minn. Stat. § 611.216 is in accord with Minn. Stat. § 611.271.

Rule 9.01, subd. 1(4) ~~for~~permits discovery of reports of examinations and tests. ~~follows F.R.Crim.P. 16(a)(2) and ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iv) (Approved Draft, 1970). The provision in this rule for reasonable tests by the defendant is taken from Unif.R.Crim.P. 421(a) (1987).~~ If a test or experiment done by the prosecution does not destroy the evidence and preclude further tests or experiments, it is not necessary under this rule to notify the defendant or to allow a defense expert to observe the test or experiment.

~~*Rule 9.01, subd. 1(5) and Rule 9.02, subd. 1(3)(d) providing for reciprocal discovery of the defendant's criminal record between prosecution and defendant is taken from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(a)(1)(iii) (1970) 48 F.R.D. 553, 588.*~~

Rule 9.01, subd. 1(5) ~~also~~ provides for the reciprocal discovery of the criminal records of any defense witness disclosed to the prosecution under Rule 9.02, subd. 1(3)~~(a)~~. Under Rule 9.03, subd. 2 ~~there is~~ a continuing duty exists to disclose ~~such~~this information ~~up~~ through trial. If the prosecutor intends to impeach the defendant or any defense witnesses with evidence of prior convictions the prosecutor is required by State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn.1980) to request a pretrial hearing on the admissibility of ~~such~~this evidence under the Rules of Evidence. The pretrial hearing may be made a part of the Omnibus Hearing under Rule 11 or the pretrial conference under Rule 12. ~~See Rule 609 of the Minnesota Rules of Evidence for the standards governing the use of criminal convictions to impeach a witness.~~

~~*Rule 9.01, subd. 1(6) provides for the pre-trial disclosure of exculpatory material which is constitutionally required at trial. (See Brady v. Maryland, 373 U.S. 83, 87-88 (1963); ABA Standards, Discovery and Procedure Before Trial, 2.1(c) (Approved Draft, 1970).)*~~

Rule 9.01, subd. 1(7) requires the ~~prosecuting attorney~~prosecutor to disclose to the defendant or defense counsel all evidence not otherwise disclosed ~~up~~on which the ~~prosecuting attorney~~prosecutor intends to rely in seeking an aggravated sentence under Blakely v. Washington, 542 U.S. 296~~, 124 S.Ct. 2531~~ (2004). ~~The prosecuting attorney also has a continuing duty to disclose such evidence under Rule 9.03, subd. 2. See Rule 1.04(d) for the definition of "aggravated sentence" and also see the comments to that rule.~~

~~The scope of the prosecutor's obligations (Rule 9.01, subd. 1(8)) to make the disclosure required by Rule 9.01, subd. 1 is taken from ABA Standards, Discovery and Procedure Before Trial, 2.1(d) (Approved Draft, 1970).~~

~~Rule 9.01, subd. 2 provides for additional discretionary disclosure upon order of the court. A motion seeking such an order must be served on the other party as required by Rules 10.04, subd. 1 and 33.01. The first paragraph of Rule 9.01, subd. 2 requires the prosecuting attorney under certain circumstances to assist the defendant in seeking access to materials related to the case which are in the control of other governmental agencies. This provision of the rule does not allow a defendant access to materials possessed by other governmental agencies that are protected by the Minnesota government data practices act in Minn. Stat. Ch. 13 or by other legislation. This provision is similar to Unif.R.Crim.P. 421(d) (1987) except that under Rule 9.01, subd. 2 a court order is required upon a showing of good cause. The second paragraph of this rule permitting the defendant to request the court to order a lineup, voice identification test or similar procedure requiring a court order is based on Unif.R.Crim.P. 435 (1987) and ALI Model Code of Pre-Arraignment Procedure § 170.2(8) (1975). The defendant who is convinced that such nontestimonial evidence would "clear" him or her may desire to proceed under this rule, although most nontestimonial evidence procedures could be conducted by the~~

~~*defendant without using this rule. Reference is made to the defendant being arrested or cited because there may be need to obtain nontestimonial evidence before a complaint is filed. The standard for issuing the order differs slightly from that utilized in Rule 9.02, subd. 2(1) upon a similar motion by the prosecuting attorney. The "good cause" standard used here minimizes the possibility that the defendant will be required to offer potentially incriminating evidence in order to utilize this rule. The third paragraph of Rule 9.01, subd. 2, following ABA Standards, Discovery and Procedure Before Trial, 2.5(a) (Approved Draft, 1970), permits disclosure by order of court of relevant material not covered by Rule 9.01, subd. 1. This rule does not permit the discovery of material non-discoverable under Rule 9.01, subd. 3 and is not intended as one of the exceptions referred to in Rule 9.01, subd. 3(1)(a).*~~ ~~*Requests or motions for discovery under Rule 9.01, subd. 2 should be made before (Rule 10.04) or at the Omnibus Hearing under Rule 11(Rules 11.03,11.04).*~~ ~~*Rule 9.01, subd. 3 enumerates the material that is not discoverable from the prosecution.*~~ ~~*Rule 9.01, subd. 3(1)(a), defining non-discoverable work product is taken from ABA Standards, Discovery and Procedure Before Trial, 2.6(a) (Approved Draft, 1970) and excludes material containing opinions, theories, or conclusions of the prosecutor and the prosecution staff and official investigators with the exception of the material specifically made discoverable by Rule 9.01, subd. 1. Rule 9.01, subd. 2 providing for discretionary discovery by order of court is not intended as one of the exceptions to the work product rule.*~~ ~~*Rule 9.01, subd. 3(1)(b), following substantially F.R.Crim.P. 16(b), excludes from discovery internal prosecution reports with the exception of the material specifically covered by Rule 9.01, subd. 1.*~~	

~~*Rule 9.01, subd. 3(2), precluding discovery of the identity and statements of prosecution witnesses and those persons referred to in Rule 9.01, subd. 1(1) and (2) if the prosecutor certifies that they or other persons may be subject to harm, is taken from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(vi) (1970) 48 F.R.D. 553, 589. ABA Standards, Discovery and Procedure Before Trial, 2.5(b) (Approved Draft, 1970) authorizes the court to deny discretionary disclosure in similar circumstances. The prohibition contained in this rule does not extend beyond the time when the witnesses are sworn to testify at the trial, thus continuing in Minnesota the application of the Jencks rule (353 U.S. 657 (1957)). (See State v. Thompson, 273 Minn. 1, 139 N.W.2d 490, 508-512 (1966), State v. Grunau, 273 Minn. 315, 141 N.W.2d 815, 823 (1966).) This rule does not prohibit discovery of a defendant's own statement.*~~

~~*Rule 9.02, covering disclosure by the defendant, is based upon ABA Standards, Discovery and Procedure Before Trial, 3.1, 3.2, 3.3 (Approved Draft, 1970). (See also Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(b)(1) (1970), 48 F.R.D. 553, 591.) The sanctions and remedies for failure of the prosecution or defense to make discovery are provided for by Rule 9.03, subd. 8.*~~

~~*Rule 9.02, subd. 1 lists the information and material the defendant shall disclose without order of court before the Omnibus Hearing (Rule 11) on request of the prosecution.*~~

~~*Rule 9.02, subd. 1(1) for disclosure of documents and tangible objects to be introduced at trial follows the original language of the parallel rule (Rule 9.01, subd. 1(3)) for prosecution disclosure of similar material. (See F.R.Crim.P. 16(c); Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(b)(1)(i) (1970), 48 F.R.D. 553, 591.)*~~ *The requirement under Rule 9.01, subd. 1(3)(g~~h~~) to disclose reports on prospective jurors does not require disclosure of opinions or conclusions*

concerning jurors given by persons assisting counsel on the case. Such material would be protected as work product under Rule 9.02, subd. 3.

~~*Rule 9.02, subd. 1(2) for disclosure of reports of examinations and tests follows the parallel prosecution disclosure rule (Rule 9.01, subd. 1(4)), except that under Rule 9.02, subd. 1(2) the information subject to defense disclosure is restricted to that to be offered at trial. This restriction on mandatory disclosure by the defendant was considered necessary to avoid the possibility of infringement on the privilege against self-incrimination. (See Jones v. Superior Court of Nevada County, 58 Cal.2d 56, 22 Cal.Rptr. 879, 372 P.2d 919 (1962); Williams v. Florida, 399 U.S. 78 (1970); ABA Standards, Discovery and Procedure Before Trial, 3.2 (Approved Draft, 1970); Preliminary Draft of Proposed Amendments to F.R.Crim.P. 16(b)(1)(ii) (1970), 48 F.R.D. 553, 591.)*~~

~~*Rule 9.02, subd. 1(3)(b) for disclosure of the statements of defense trial witnesses also follows the parallel prosecution disclosure Rule 9.01, subd. 1(1)(a). Rule 9.02, subd. 1(3)(b), which requires the defense to disclose statements of defense and prosecution witnesses, does not require the disclosure of a defendant's statements made to defense counsel or agents of defense counsel where such information is protected by state and federal constitutional guarantees or the attorney-client privilege. See Minn. Stat. § 595.02, subd. 1(b).*~~ *The provision in ~~this rule~~Rule 9.02 subd. 1(4)(d) that defense counsel and the defendant disclose the substance of any oral statements obtained from persons whom the defendant intends to call at the trial is not intended to support a claim that if counsel or the defendant interviewed the witness without a third party present that ~~the lawyer~~defense counsel can be disqualified in order to permit counsel to testify to any discrepancy between the oral statement disclosed and the witness's trial testimony, or that if the defendant declines to testify to ~~any such~~the discrepancy that the witness's testimony should be stricken. Other solutions*

should be sought, such as stipulating ~~to what the witness said that is in dispute~~that in the interview that counsel or the defendant conducted, the witness made the statement the prosecutor now seeks to impeach.

Rule 9.02, subd. 1~~(3)(a)~~(5) requires written notice of any defense—other than not guilty— on which the defendant intends to rely at the trial, along with the names and addresses of the witnesses the defendant intends to call at the trial. ~~This rule is based on ABA Standards, Discovery and Procedure Before Trial, 3.3 (Approved Draft, 1970).~~ The defendant is not required to indicate the witnesses intended to be used for each defense except ~~in the case of~~for the defense of alibi (Rule 9.02, subd. 1~~(3)(c)~~(7)). ~~Illustrations of the kinds of defenses requiring notice are set forth in Rule 9.02, subd. 1(3)(a). (See Williams v. Florida, 90 S.Ct. 1893, 399 U.S. 78, 26 L.Ed.2d 446 (1970) sustaining the constitutionality of the Florida notice-of-alibi statute.) (This rule expands present Minnesota statutory law covering notice of alibi. Minn. Stat. § 630.14 (1971).)~~

~~*Under Rule 9.02, subd. 1(3)(a), a defendant who gives notice of intention to rely on the defense of mental illness or mental deficiency, shall notify the prosecution of any intention to rely also on the defense of not guilty. This notice is necessary for the purposes of Rule 20.02, subd. 6(1) and (2) governing the procedure following a mental examination when the defense is mental illness or mental deficiency.*~~

~~*In addition to Rule 9.02, subd. 1(3)(a), case law may establish notice requirements with which a defendant must comply in order to raise certain defenses. In State v. Grilli, 304 Minn. 80, 230 N.W.2d 445 (1975), the Court established the requirement that a defendant raising the defense of entrapment must notify the trial court and the prosecutor of the basis for the defense in reasonable detail and whether the defendant elects to have the issue*~~

~~*of entrapment tried to the court or to a jury.*~~ ~~*Rule 9.02, subd. 1(3)(d) for disclosure of the defendant's criminal record is similar to Rule 9.01, subd. 1(5) for prosecution disclosure of the record.*~~ ~~*The procedures set forth in Rule 9.02, subd. 1(3)(e) for asserting the entrapment defense are taken from State v. Grilli, 304 Minn. 80, 230 N.W.2d 445 (1975). That case further requires that upon submission of the defense to court or jury, the defendant has the burden of proving by a fair preponderance of the evidence inducement by government agents to commit the crime charged, whereupon the burden rests on the state to prove beyond a reasonable doubt predisposition by defendant to commit the offense.*~~ ~~*If the defendant asserts the defense of violation of due process with the entrapment defense or separately, the defense shall be heard and determined by the court. The concept of fundamental fairness inherent in the due process requirement will prevent conviction of even a predisposed defendant if the conduct of the government in participating in or inducing the commission of the crime is outrageous. As to this due process defense see Hampton v. United States, 425 U.S. 484, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976), State v. Ford, 276 N.W.2d 178 (Minn.1979), and State v. Morris, 272 N.W.2d 35 (Minn.1978).*~~ ~~*Rule 9.02, subd. 2, requiring the defendant upon order of court to personally submit to the non testimonial identification and other procedures described in the rule, is based upon ABA Standards, Discovery and Procedure Before Trial, 3.1 (Approved Draft, 1970) and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 41.1 (1971), 52 F.R.D. 409, 462-467. (See also, Schmerber v. California, 384 U.S. 757 (1966), Davis v. Mississippi, 394 U.S. 721, 727-728 (1969).) This rule is intended to be applicable only after an indictment has been returned, or a complaint filed upon which probable cause for the arrest of the defendant*~~	

~~*has been found.*~~ *Rule 9.02, subd. 2 regulates orders for nontestimonial identification or other procedures. This rule applies after a defendant has been charged. Precharging nontestimonial procedures are usually accomplished by search warrant.* ~~*Following indictment, the order under Rule 9.02, subd. 2 may be obtained from the district court at any time before trial, but preferably it should be sought at or before the Omnibus Hearing under Rule 11.*~~ *Following* ~~*a complaint*~~*the charging of a felony or gross misdemeanor, the order may be obtained at the first appearance of the defendant under Rule 4.02, subd. 5(1), and Rule 5, or at or before the Omnibus Hearing under Rule 11*~~*from the court before which that hearing is held*~~*. ~~It~~The order may be obtained from the district court at any time before trial, but preferably at or before the Omnibus Hearing.* ~~*Rule 9.02, subd. 2(2), requiring notice to defense counsel of the time and place for the personal appearance of the defendant, would include the defendant if the defendant represents herself or himself or is unrepresented. This rule is taken from ABA Standards, Discovery and Procedure Before Trial, 3.1(b) (Approved Draft, 1970).*~~ ~~*Rule 9.02, subd. 2(3) providing for medical supervision and for modifications of the order as to time and place is based on Preliminary Draft of Proposed Amendments to F.R.Crim.P. 41.1(e)(i) (1971), 52 F.R.D. 409, 464-465.*~~ ~~*Rule 9.02, subd. 2(4), providing for notice to defense counsel of the results of the examination, is based on Preliminary Draft of Proposed Amendments to F.R.Crim.P. 41.1(j) (1971), 52 F.R.D. 409, 465.*~~ ~~*Rule 9.02, subd. 2(5) provides that the method prescribed by Rule 9.02, subd. 2 for*~~	

~~*obtaining the identification and other evidence from the defendant under order of court is not intended to exclude other lawful measures, such as a lawful search and seizure, by which the evidence may be obtained.*~~

~~*Rule 9.02, subd. 3, paralleling the language of Rule 9.01, subd. 3(1)(a) governing work product of the prosecution, defines the work product that is not subject to disclosure by the defendant, except as provided in Rules 9.02, subds. 1, 2 and 3.*~~

~~*Rule 9.03, governing the regulation of discovery is based on ABA Standards, Discovery and Procedure Before Trial, 4.1-4.7 (Approved Draft, 1970) and F.R.Crim.P. 16(c)(g).*~~

~~*Rule 9.03, subd. 1 follows substantially the language of ABA Standards, Discovery and Procedure Before Trial, 4.1 (Approved Draft, 1970) protecting interference with discovery.*~~

~~*The first sentence of Rule 9.03, subd. 2 providing for a continuing duty of disclosure is taken from ABA Standards, Discovery and Procedure Before Trial, 4.2 (Approved Draft, 1970) and F.R.Crim.P. 16(g). The second sentence is intended to make it clear that each party has a continuing duty before and at trial to make the disclosures required by Rule 9.01, subd. 1 and 9.02, subd. 1 regardless of whether the party has previously made discovery under the rules or on order of court. A party who fails to make discovery when under a duty to do so may be ordered to comply under Rule 9.03, subd. 8.*~~

~~*Rule 9.03, subd. 3, governing court orders for regulation of discovery, is taken from F.R.Crim.P. 16(d).*~~

~~*Rule 9.03, subd. 4, providing for the custody of discovered materials, comes from ABA Standards, Discovery and Procedure Before Trial, 4.3 (Approved Draft, 1970).*~~

~~*Rule 9.03, subd. 5, authorizing protective*~~

~~*orders, follows ABA Standards, Discovery and Procedure Before Trial, 4.4 (Approved Draft, 1970). (See also F.R.Crim.P. 16(e).) In commenting on this standard (see Comment ABA Standards, Discovery and Procedure Before Trial, 4.4, p. 101 (Approved Draft, 1970)) the Committee stated as follows: "This standard permits application by the party concerned to the court for a protective order which can be tailored to the particular circumstances of the case. It is anticipated that it will ordinarily be needed with respect to those matters for which discovery is mandated, rather than matters where the court in the first instance can exercise discretion upon application of the defense and thus take exceptional circumstances into account at that time."*~~

In making protective orders under Rule 9.03, subd. 5 or in ruling on motions to compel discovery under Rules 9.01, subd. 2, and 9.03, subd. 8, the court may avail itself of Rule 9.03, subds. 6 and ~~subd.~~ 7 authorizing in camera proceedings and excision.

~~*Rule 9.03, subd. 6 and subd. 7 are taken from ABA Standards, Discovery and Procedure Before Trial, 4.5 and 4.6 (Approved Draft, 1970) and F.R.Crim.P. 16(e).*~~

~~*Rule 9.03, subd. 8 providing for sanctions follows ABA Standards, Discovery and Procedure Before Trial, 4.7 (Approved Draft, 1970).*~~

~~*Under Rule 9.03, subd. 10, the obligation of the defendant or the prosecutor to permit reproduction of items discoverable under Rule 9 may be satisfied not just by photocopying, but also by any other existing or future technology that permits transmission of an exact reproduction of the item. This would include E-mail or facsimile transmission if the other party has the equipment necessary to receive such transmissions. The provision in this rule permitting free copies to public defenders and attorneys working for public defense corporations under Minn. Stat. § 611.216 is in*~~

~~*accord with Minn. Stat. § 611.271.*~~ *Under Rule 9.04 the prosecutor should reveal not only the reports physically in the prosecutor's possession, but also those concerning the case that are in the possession of the police.* *In those rare cases where additional discovery is considered necessary by either party, it shall be by consent of the parties or by motion to the court. In such cases it is expected that the parties and the court will be guided by the extensive discovery provisions of these rules. Rule 9 provides guidelines for deciding any such motions, but they are not mandatory and the decision is within the discretion of the district court judge. State v. Davis, 592 N.W.2d 457 (Minn. 1999)* *Under Rule 9.05, the provision of the rule permitting free copies to public defenders and attorneys working for a public defense corporation under Minn. Stat. § 611.216 is in accord with Minn. Stat. § 611.271.*	

Proposed Revisions to Minn. R. Crim. P. 10

Original Language Showing Markup	Proposed Revised Language
Rule 10. Pleadings and Motions Before Trial; Defenses and Objections	**Rule 10. Pleadings and Motions Before Trial; Defenses and Objections**
Rule 10.01 Pleadings and Motions	**Rule 10.01 Pleadings and Motions**
Subd. 1. Pleadings. ~~Pleadings in criminal proceedings shall be by~~The pleadings consist of the indictment, complaint, or tab charge and ~~the~~any plea~~s prescribed by these rules~~permitted by Rule 14.	Subd. 1. Pleadings. The pleadings consist of the indictment, complaint, or tab charge and any plea permitted by Rule 14.
Subd. 2. Motions; Waiver. Defenses, objections, issues, or requests ~~which are capable of determination~~that can be determined without trial on the merits ~~shall~~must be ~~asserted or~~ made before trial by a motion to dismiss or to grant appropriate relief. The motion must include all defenses, objections, issues, and requests then available. Failure to include any of them in the motion constitutes waiver, but lack of jurisdiction over the offense or failure of the indictment or complaint to charge an offense can be noticed by the court at any time during the proceeding.	Subd. 2. Motions; Waiver. Defenses, objections, issues, or requests that can be determined without trial on the merits must be made before trial by a motion to dismiss or to grant appropriate relief. The motion must include all defenses, objections, issues, and requests then available. Failure to include any of them in the motion constitutes waiver, but lack of jurisdiction over the offense or failure of the indictment or complaint to charge an offense can be noticed by the court at any time during the proceeding.
The court can grant relief from the waiver for good cause. The defendant does not waive any defenses or objections by including them in a motion with other defenses, objections, or issues.	The court can grant relief from the waiver for good cause. The defendant does not waive any defenses or objections by including them in a motion with other defenses, objections, or issues.
Rule 10.02 Motions Attacking Court Jurisdiction ~~of the Court~~ in Misdemeanor Cases	**Rule 10.02 Motions Attacking Court Jurisdiction in Misdemeanor Cases**
A motion to dismiss for ~~want~~lack of personal jurisdiction in a misdemeanor case ~~shall~~ cannot be made until after the prosecutor files a complaint ~~is filed~~ and ~~a~~ the defendant pleads not guilty, ~~plea entered~~ unless the court hears and determines the motion ~~is heard and determined~~ summarily. Notice of ~~such a~~the motion ~~shall~~must be given ~~either~~ orally on the record in court or in writing to the ~~prosecution~~prosecutor. ~~Such~~ The notice ~~shall~~must be given no ~~more~~ later than ~~seven (~~7~~)~~ days after entry of the not guilty plea, or else ~~any~~ the jurisdictional challenge ~~to the personal jurisdiction of the court~~ is waived. ~~unless the~~The court for good cause ~~shown grants~~can grant relief from the waiver.	A motion to dismiss for lack of personal jurisdiction in a misdemeanor case cannot be made until after the prosecutor files a complaint and the defendant pleads not guilty, unless the court hears and determines the motion summarily. Notice of the motion must be given orally on the record in court or in writing to the prosecutor. The notice must be given no later than 7 days after entry of the not guilty plea, or else the jurisdictional challenge is waived. The court for good cause can grant relief from the waiver.

~~The motion shall be served, heard and determined.~~

~~Rule 10.03 Waiver~~

~~The motion shall include all defenses, objections, issues and requests then available to the moving party. Failure to include any of them in the motion constitutes a waiver thereof, but the court for good cause shown may grant relief from the waiver. However, lack of jurisdiction over the offense or the failure of the indictment or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding. The defendant does not waive any defenses or objections by including them in any motion with other defenses, objections or issues.~~

Rule ~~10.04~~10.03 Service of Motions; Hearing Date

Subd. 1. Service. In felony and gross misdemeanor cases, motions ~~shall~~must be made in writing and served upon opposing counsel ~~not~~no later than ~~three (~~3~~)~~ days before the Omnibus Hearing unless the court for good cause shown permits the motion to be made and served ~~at a~~ later ~~time~~.

In misdemeanor cases, except as ~~otherwise~~ permitted ~~by Rule 10.04,~~in ~~subd.~~subdivision 2, motions ~~shall~~must be made in writing and served – along with any supporting affidavits – ~~shall be served up~~on opposing counsel at least ~~three (~~3~~)~~ days before ~~they are to be heard~~the hearing and no more than ~~thirty (~~30~~)~~ days after the arraignment unless the court for good cause shown permits the motion to be made and served ~~at a~~ later ~~time~~.

Subd. 2. Hearing Date. In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it ~~shall~~must be heard at that hearing and ~~shall be~~determined as provided ~~by~~in Rule 11.07.

In misdemeanor cases, if a pretrial conference is held, the motion ~~shall~~must be heard ~~there~~then unless the court directs otherwise for the purpose of hearing witnesses, or for other good cause. If the motion is not heard at a pretrial conference, it

Rule 10.03 Service of Motions; Hearing Date

Subd. 1. Service. In felony and gross misdemeanor cases, motions must be made in writing and served upon opposing counsel no later than 3 days before the Omnibus Hearing unless the court for good cause shown permits the motion to be made and served later.

In misdemeanor cases, except as permitted in subdivision 2, motions must be made in writing and served – along with any supporting affidavits – on opposing counsel at least 3 days before the hearing and no more than 30 days after the arraignment unless the court for good cause shown permits the motion to be made and served later.

Subd. 2. Hearing Date. In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it must be heard at that hearing and determined as provided in Rule 11.07.

In misdemeanor cases, if a pretrial conference is held, the motion must be heard then unless the court directs otherwise for the purpose of hearing witnesses, or for other good cause. If the motion is not heard at a pretrial conference, it must be heard before trial, unless the court – upon agreement by

~~shall~~must be heard ~~immediately prior to~~before trial, ~~provided that~~ unless the court ~~may~~ upon agreement by the prosecutor and defense ~~counsel~~attorney – ~~summarily~~ hears and determines the motion at arraignment. If the court hears the motion ~~is heard~~ at the arraignment, it need not be in writing, but a record ~~shall~~must be made of the proceedings, and witnesses may be called in the court's discretion ~~witnesses may be called~~. The motion ~~shall~~must be determined before trial as provided ~~by~~in Rule 12.07.

Subd. 3. Discovery. A party intending to call witnesses at a motion hearing must disclose them at least ~~three~~ 3 days before the hearing and must comply with Rule 9 as if the witnesses were to be called at the trial.

Comment—Rule 10

~~*Under Rule 10.01 the prosecution's pleadings consist of the indictment, complaint or tab charge. (The filing of a complaint does not, however, preclude an indictment (Rule 17.01).) The complaint continues to be the accusatory pleading for misdemeanors and also takes the place of the information (Minn. Stat. § 628.29 (1971)) for felonies and gross misdemeanors.*~~

~~*As provided by Rule 14 the defendant's pleadings are the pleas of guilty, not guilty, not guilty by reason of mental illness or mental deficiency, and double jeopardy, or that prosecution is barred by Minn. Stat. § 609.035 (1971). The entry of any of these pleas does not relieve the defendant of the requirements of Rule 9.02, subd. 1(3)(a) for service of notice of the defenses on which the defendant intends to rely. Rule 14 adopts the pleas provided by Minn. Stat. § 630.28 except for the bar of § 609.035, and except that the plea of not guilty by reason of mental illness or deficiency is added for the purposes of Rule 20.02 governing the procedures upon a defense of mental illness or mental deficiency.*~~

~~*That portion of Rule 10.01 providing that all pre-trial defenses, objections, and requests, determinable without trial on the merits, shall be asserted by motion to dismiss or to grant appropriate relief is taken from F.R.Crim.P. 12.*~~

the prosecutor and defense attorney – hears and determines the motion at arraignment. If the court hears the motion at the arraignment, it need not be in writing, but a record must be made of the proceedings, and witnesses can be called in the court's discretion. The motion must be determined before trial as provided in Rule 12.07.

Subd. 3. Discovery. A party intending to call witnesses at a motion hearing must disclose them at least 3 days before the hearing and must comply with Rule 9 as if the witnesses were to be called at the trial.

Comment—Rule 10

Rule 10 does not require pre-trial motions to be made before a plea is entered.

As a general rule, under Rule 10.02 no challenge to the court's personal jurisdiction can be made in a misdemeanor case until after a complaint has been filed. Therefore, a defendant who has been tab charged must first demand a complaint under Rule 4.02, subd. 5(3) before raising the jurisdictional challenge. If no complaint is issued, the charge must be dismissed under Rule 4.02, subd. 5(3). If a complaint is issued, it will often make any possible challenge moot, since a valid complaint would give the court jurisdiction even if the arrest was illegal. See City of St. Paul v. Webb, 256 Minn. 210, 97 N.W.2d 638 (1959). Once the complaint is issued, the jurisdictional challenge becomes a sufficiency of the complaint question.

If the defendant's motion to dismiss is denied, Rule 17.06, subd. 4(1) provides that the defendant can continue to raise the jurisdictional issue on direct appeal if convicted after a trial. This procedure avoids the necessity of seeking review by an extraordinary writ that oftentimes would delay a trial otherwise ready to proceed.

Rule 17.06, subd. 4 describes the effect of determining a motion to dismiss under this rule.

~~The motion to dismiss or to grant appropriate relief will take the place of the demurrer (Minn. Stat. §§ 630.22, 630.23 (1971)) and motion to quash or set aside the indictment (Minn. Stat. § 630.18 (1971)). (See also, Rules 18.02, subd. 2; 17.06, subd. 2). The rule~~Rule 10 does not require pre-trial motions to be made before a plea is entered.

~~Rule 5.04, subd. 5 abolishes special appearances as the method for challenging the personal jurisdiction of the court and Rule 10.02 establishes a different procedure for making such a challenge. As to the basis for such a challenge see City of St. Paul v. Webb, 256 Minn. 210, 97 N.W.2d 638 (1959).~~

As a general rule, under Rule 10.02 no challenge to the personal jurisdiction of the court may be made in a misdemeanor case until after a complaint has been filed. Therefore, a defendant who has been tab charged~~,~~ must first demand a complaint under Rule 4.02, subd. 5(3) before raising the jurisdictional challenge. If no complaint is issued, the charge must be dismissed under Rule 4.02, subd. 5(3). If a complaint is issued, it will often make any possible challenge moot, since a valid complaint would give the court jurisdiction even if the arrest was illegal. See City of St. Paul v. Webb, ~~supra~~256 Minn. 210, 97 N.W.2d 638 (1959). Once the complaint is issued, the jurisdictional challenge becomes a question of the sufficiency of the complaint.

~~Rule 10.02 also provides that a motion to dismiss for want of personal jurisdiction shall be made after entry of a not guilty plea, and the entry of that plea does not waive the jurisdictional challenge. This reverses prior Minnesota case law providing that any plea waived a challenge to the court's jurisdiction. See State v. Stark, 288 Minn. 286, 179 N.W.2d 597 (1970); State v. Mastrian, 285 Minn. 51, 171 N.W.2d 695 (1969); State v. Burch, 285 Minn. 300, 170 N.W.2d 543 (1969). But see also State v. Harbitz, 293 Minn. 224, 198 N.W.2d 342 (1972) where the defendant following a trial on the merits was permitted to challenge on appeal the trial court's denial of the defendant's pretrial motion to quash an improper indictment.~~

~~To initiate the challenge to the court's personal jurisdiction, notice must be given that a motion to~~

In misdemeanor cases, Rule 10.03, subd. 2 provides an alternative method to dispose of a motion to dismiss – including a motion to dismiss for want of personal jurisdiction – at the time of arraignment. When there is no dispute over the facts, and the law can be quickly and adequately argued, this alternative procedure can provide an immediate disposition and avoid the delay and expense of further court appearances.

~~*dismiss for want of personal jurisdiction will be made. This notice must be given no more than 7 days after entry of the not guilty plea or the challenge is waived unless the court for good cause shown grants relief from the waiver. The notice may be given either orally in court or in writing directly to the prosecution. The challenge then proceeds as in any other motion to dismiss under Rule 10.04. Therefore, under Rule 10.04, subd. 1, a written motion together with any necessary affidavits must be served at least three days before the motion is to be heard and no more than 30 days after the arraignment. Under Rule 10.04, subd. 2 if a pretrial is held, the motion is normally heard there based on affidavits if available. If it is necessary to hear testimony on the matter, or for other good cause, the motion need not be heard at the pretrial. If the motion is not heard at the pretrial, it will be heard immediately prior to trial when any necessary witnesses will most likely be present.*~~

If the defendant's motion to dismiss is denied, Rule 17.06, subd. 4(1) provides that the defendant may continue to raise the jurisdictional issue on direct appeal if convicted ~~*following*~~ *after a trial. This procedure avoids the necessity of seeking review by an extraordinary writ* ~~*which*~~ *that oftentimes would delay a trial otherwise ready to proceed.* ~~*This procedure reverses prior case law. See State v. Stark, supra.*~~

~~*Rule 10.03 providing for waiver of defenses, objections, and requests not included in a motion under Rule 10.01 and then available except lack of jurisdiction or failure to charge an offense (See also Minn. Stat. § 630.27 (1971).) is based on ABA Standards, Discovery and Procedure Before Trial, 5.3(b) (Approved Draft, 1970) and substantially follows the language of F.R.Crim.P. 12(b)(2).*~~

Rule 17.06, subd. 4 describes the effect of determining a motion to dismiss under this rule. ~~*The effect of a determination of a motion to dismiss under this rule is covered by Rule 17.06, subd. 4.*~~

~~*That portion of Rule 10.03 providing that the defendant does not waive defenses and objections by including them with other defenses and objections is based on Minn.R.Civ.P. 12.02.*~~

~~*Under Rule 10.04, subd. 1 and subd. 2, the pre-trial motions shall be in writing and shall be served upon opposing counsel not later than three (3) days before the Omnibus Hearing to be held under Rule 11 (unless the time is extended for good cause) in order that the issues raised by the motion may be heard at that hearing as provided by Rule 11.03. Rule 10.04, subd. 1 should not prevent the court from hearing at the Omnibus Hearing on the court's initiative (See Rule 11.04.) those issues which first appear or arise at that time if the parties do not need additional time to prepare.*~~ ~~*Under Rule 10.04, subd. 2, pre-trial motions heard at the Omnibus Hearing and those heard afterward shall be determined by the time as provided by Rule 11.07, which requires the Omnibus Hearing to be completed and all issues decided within 30 days after the defendant's appearance under Rule 8 unless a later time is justified by good cause related to the particular case. In misdemeanor cases, under Rule 10.04, subd. 2, pre-trial motions shall be determined as provided by Rule 12.07.*~~ *In misdemeanor cases, Rule ~~10.04~~10.03, subd. 2 ~~also~~ provides ~~in misdemeanor cases~~ an alternative method ~~for disposing~~to dispose of a motion to dismiss ~~(~~ including a motion to dismiss for want of personal jurisdiction~~)~~ – at the time of arraignment. ~~If agreed to by the prosecutor and defense counsel, the court may summarily hear and determine a motion to dismiss at the arraignment. In such cases the motion need not be in writing, but a record shall be made of the proceedings and, in the court's discretion, witnesses may be called. For those cases in which~~ When there is no dispute over the facts, and the law can be quickly and adequately argued, this alternative procedure ~~could~~ can provide an immediate disposition ~~avoiding~~and avoid the delay and expense of further court appearances.*	

Original Language Showing Markup	Proposed Revised Language
RULE 11. THE OMNIBUS HEARING ~~IN FELONY AND GROSS MISDEMEANOR CASES~~	**RULE 11. THE OMNIBUS HEARING**
Rule 11.01. Time and Place of Hearing	**Rule 11.01. Time and Place of Hearing**
~~If~~In felony and gross misdemeanor cases, if the defendant ~~does~~has not ~~plead~~pled guilty, ~~in a felony case at the initial appearance under Rule 8 or, in a gross misdemeanor case at the first appearance under Rule 5 or at the initial appearance under Rule 8,~~ an Omnibus ~~h~~Hearing ~~shall~~must be held ~~as follows:~~.	In felony and gross misdemeanor cases, if the defendant has not pled guilty, an Omnibus Hearing must be held.
(a) The Omnibus Hearing must start within 42 days of the Rule 5 appearance if it was not combined with the Rule 8 hearing, or within 28 days of the Rule 5 appearance if it was combined with the Rule 8 hearing.	(a) The Omnibus Hearing must start within 42 days of the Rule 5 appearance if it was not combined with the Rule 8 hearing, or within 28 days of the Rule 5 appearance if it was combined with the Rule 8 hearing.
(b) The ~~hearing shall~~Omnibus Hearing must be held in the district ~~court in the judicial district~~ where~~in~~ the alleged offense ~~was committed~~occurred.	(b) The Omnibus Hearing must be held in the district where the alleged offense occurred.
Rule 11.02. Scope of the Hearing ~~on Evidentiary Issues~~	**Rule 11.02. Scope of the Hearing**
~~**Subd. 1. Evidence.**~~ If the prosecutor or defendant~~ or prosecution has demanded~~demands a hearing ~~on either of the issues specified by~~under Rule 8.03, the court ~~shall~~must ~~hear and determine them upon such evidence as may be offered by the prosecution or the defense.~~conduct an Omnibus Hearing and hear all motions relating to:	If the prosecutor or defendant demands a hearing under Rule 8.03, the court must conduct an Omnibus Hearing and hear all motions relating to:
(a) Probable cause; (b) Evidentiary issues; (c) Discovery; (d) Admissibility of other crimes, wrongs or bad acts under Minnesota Rule of Evidence 404(b);	(a) Probable cause; (b) Evidentiary issues; (c) Discovery; (d) Admissibility of other crimes, wrongs or bad acts under Minnesota Rule of Evidence

Original Language Showing Markup	Proposed Revised Language
(e) Admissibility of relationship evidence under Minn. Stat. § 634.20; (f) Admissibility of prior sexual conduct under Minnesota Rule of Evidence 412; (g) Constitutional issues; (h) Procedural issues; (i) Aggravated sentence; (j) Any other issues relating to a fair and expeditious trial.	404(b); (e) Admissibility of relationship evidence under Minn. Stat. § 634.20; (f) Admissibility of prior sexual conduct under Minnesota Rule of Evidence 412; (g) Constitutional issues; (h) Procedural issues; (i) Aggravated sentence; (j) Any other issues relating to a fair and expeditious trial.
~~If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record.~~	
~~**Subd. 2. Cross-Examination.** Upon such hearing, the defendant and the prosecution may cross-examine the other's witnesses.~~	
Rule 11.03. General Procedures	**Rule 11.03. General Procedures**
(a) The court may receive evidence offered by the prosecutor or defendant on any omnibus issue. A party may cross-examine any witness called by any other party.	(a) The court may receive evidence offered by the prosecutor or defendant on any omnibus issue. A party may cross-examine any witness called by any other party.
(b) Before or during the Omnibus Hearing or any other pretrial hearing, witnesses may be sequestered or excluded from the courtroom.	(b) Before or during the Omnibus Hearing or any other pretrial hearing, witnesses may be sequestered or excluded from the courtroom.
Rule ~~11.03~~11.04 Omnibus Motions	**Rule 11.04 Omnibus Motions**
Subd. 1. Probable Cause Motions. (a) The court ~~shall~~must ~~hear and~~ determine ~~all motions made by the defendant or prosecution, including a motion that there is an insufficient showing of~~ whether probable cause ~~to believe~~ exists to believe that an offense has been committed and that the defendant committed it ~~the offense charged in the complaint, and receive such evidence as may be offered in support or opposition~~.	Subd. 1. Probable Cause Motions. (a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.

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(b) The prosecutor and defendant may offer evidence at the probable cause hearing. ~~Each party may cross-examine any witnesses produced by the other.~~	(b) The prosecutor and defendant may offer evidence at the probable cause hearing.
(c) The court may find~~A finding by the court of~~ probable cause ~~shall be based upon~~ the face of the complaint or the entire record, including reliable hearsay ~~in whole or in part~~. Evidence considered on the issue of probable cause ~~shall be~~is subject to the requirements of Rule 18.06, subd. 1.	(c) The court may find probable cause on the face of the complaint or the entire record, including reliable hearsay. Evidence considered on the issue of probable cause is subject to the requirements of Rule 18.06, subd. 1.
~~**Rule 11.04. Other Issues.**~~ ~~The Omnibus Hearing may include a pretrial dispositional conference to determine whether the case can be resolved without scheduling it for trial. The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose as permitted by Rule 11.07.~~ ~~If the prosecution has given notice under Rule 7.02 of intention to offer evidence of additional offenses, upon motion a hearing shall be held to determine their admissibility under Rule 404(b) of the Minnesota Rules of Evidence and whether there is clear and convincing evidence that defendant committed the offenses.~~	
Subd. 2. Aggravated Sentence Motion. (a) If the prosecutor ~~has given~~gave notice under Rule 7.03 or 19.04, subd. 6(3) of intent to seek an aggravated sentence, ~~a hearing shall be held to~~the court must determine whether the law and proffered evidence support an aggravated sentence. ~~If so, the~~The court ~~shall~~must also determine whether ~~the issues will be presented to the jury in~~to conduct a	Subd. 2. Aggravated Sentence Motions. (a) If the prosecutor gave notice under Rule 7.03 or 19.04, subd. 6(3) of intent to seek an aggravated sentence, the court must determine whether the law and proffered evidence support an aggravated sentence. The court must also determine whether to conduct a unitary or bifurcated trial.

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unitary or bifurcated trial.	
(b) In deciding whether to bifurcate ~~the trial~~, the court ~~shall consider~~must determine whether the evidence ~~in~~ supporting ~~of~~ an aggravated sentence is otherwise admissible in the guilt phase of ~~the~~ trial and whether ~~unfair prejudice would result to the defendant in~~ a unitary trial would unfairly prejudice the defendant. The court must order a ~~A~~ bifurcated trial ~~shall be ordered where~~ if the evidence ~~in~~ supporting ~~of~~ an aggravated sentence includes evidence ~~that is~~otherwise inadmissible ~~during~~at the guilt phase of the trial or if that evidence would ~~result in~~ unfairly prejudice ~~to~~ the defendant in the guilt phase.	(b) In deciding whether to bifurcate, the court must determine whether the evidence supporting an aggravated sentence is otherwise admissible in the guilt phase of trial and whether a unitary trial would unfairly prejudice the defendant. The court must order a bifurcated trial if the evidence supporting an aggravated sentence includes evidence otherwise inadmissible at the guilt phase of the trial or if that evidence would unfairly prejudice the defendant in the guilt phase.
(c) If the court orders a unitary trial, the court may ~~still~~ order separate final arguments on the issues of guilt and the aggravated sentence.	(c) If the court orders a unitary trial, the court may order separate final arguments on the issues of guilt and the aggravated sentence.
~~If the defendant intends to offer evidence of a victim's previous sexual conduct in a prosecution for violation of Minnesota Statutes, sections 609.342 to 609.346, a motion shall be made pursuant to the procedures prescribed by Rule 412 of the Minnesota Rules of Evidence.~~	
Rule 11.05. Pretrial Conference	**Rule 11.05. Pretrial Conference**
The Omnibus Hearing may also include a pretrial conference to determine whether the case can be resolved before trial.	The Omnibus Hearing may also include a pretrial conference to determine whether the case can be resolved before trial.
~~**Rule 11.05. Amendment of Complaint**~~	
~~The complaint may be amended as prescribed by these rules.~~	

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~~**Rule 11.06. Pleas**~~ ~~At the hearing the defendant may be permitted to plead to the offense charged in the complaint or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15.~~	
Rule ~~11.07~~11.06. Continuances~~;~~ ~~Determination of Issues~~ ~~Upon motion of the prosecuting attorney or the defendant or upon the court's initiative, the~~The court may continue the hearing or any part ~~thereof from time to time as may be necessary~~of the hearing for good cause related to the ~~particular~~ case.~~ All issues presented at the Omnibus Hearing shall be determined within 30 days after the defendant's appearance under Rule 8 unless a later determination is required for good cause related to the particular case. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing except as otherwise permitted by these rules.~~	**Rule 11.06. Continuances** The court may continue the hearing or any part of the hearing for good cause related to the case.
Rule 11.07. Determination of Issues The court must make findings and determinations on the omnibus issues in writing or on the record within 7 business days of the Omnibus Hearing.	**Rule 11.07. Determination of Issues** The court must make findings and determinations on the omnibus issues in writing or on the record within 7 business days of the Omnibus Hearing.
~~**Rule 11.08. Record**~~ ~~Subd. 1. Recording. A verbatim record of the proceedings shall be made.~~ ~~**Subd. 2. Transcript.** Upon timely application to the reporter, counsel for the defendant or for the prosecution shall be furnished with a transcript of the proceedings~~	

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~~upon the following conditions:~~ ~~(a) If the transcript is to be furnished to defense counsel, the costs thereof shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.~~ ~~(b) The prosecution shall be furnished with the transcript without prepayment of costs.~~ ~~(c) When a transcript is furnished to counsel, a copy shall be filed with the clerk of the court.~~ ~~**Subd. 3. Filing.** The record and all papers and exhibits in the proceeding shall be filed or placed in the custody of the clerk of the court. Upon order of the court any exhibit may be returned to the party producing it.~~ ~~**Rule 11.09. Deleted eff. August 1, 1987**~~	
Rule ~~11.10~~11.08. Plea~~s; Trial Date~~ (a) The defendant may enter a plea to the charged offense or to a lesser included offense as permitted in Rule 15 anytime after the commencement of the Omnibus Hearing. ~~If the defendant is not discharged the defendant shall plead to the complaint or be given additional time within which to plead. If the defendant so requests, the court shall allow the defendant at the Omnibus Hearing to enter a plea, including a not guilty plea, even if the Omnibus Hearing is continued or Omnibus Hearing issues are still pending for decision by the court.~~ (b) ~~The entry~~Entry of a plea other than	**Rule 11.08. Pleas** (a) The defendant may enter a plea to the charged offense or to a lesser included offense as permitted in Rule 15 anytime after the commencement of the Omnibus Hearing. (b) Entry of a plea other than guilty does

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guilty ~~in that situation~~ does not waive any ~~pending~~ jurisdictional or other issue~~s that the defendant may have~~ raised for determination ~~by the court at~~in the Omnibus Hearing.	not waive any jurisdictional or other issue raised for determination in the Omnibus Hearing.
Rule 11.09. Trial Date	**Rule 11.09. Trial Date**
(a) If the defendant enters a plea other than guilty, a trial date ~~shall~~must ~~then~~ be set.	(a) If the defendant enters a plea other than guilty, a trial date must be set.
(b) A defendant ~~shall~~must be tried as soon as possible after entry of a plea other than guilty. ~~On demand made in~~ On demand of any party ~~writing or orally on the record by the prosecuting attorney or the defendant,~~ the trial ~~shall be commenced~~must start within sixty (60) days ~~from the date~~ of the demand unless the court finds good cause ~~is shown upon the prosecuting attorney's or the defendant's motion or upon the court's initiative why the defendant should not be brought to trial within that period~~for a later trial date. The time period ~~shall not~~ begins ~~to run earlier than~~on the date of the plea other than guilty.	(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party the trial must start within sixty (60) days of the demand unless the court finds good cause for a later trial date. The time period begins on the date of the plea other than guilty.
~~If~~Unless exigent circumstances exist, if trial ~~is~~does not ~~commenced~~start within 120 days ~~after such~~from the date the plea other than guilty is entered and the demand is made ~~and such a plea is entered, the defendant, except in exigent circumstances~~, ~~shall~~ the defendant must be released ~~subject to such~~under any nonmonetary ~~release~~ conditions ~~as may be required by~~ the court orders under Rule 6.01, subd. 1.	Unless exigent circumstances exist, if does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.
~~**Rule 11.11. Exclusion of Witnesses**~~	
~~Before or during any Omnibus or other pretrial hearing or proceeding, witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.~~	

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Rule 11.10. Record	**Rule 11.10. Record**
Subd. 1. Record. A verbatim record must be made.	Subd. 1. Record. A verbatim record must be made.
Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:	Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:
(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient affidavit of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.	(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient affidavit of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.
(b) The transcript must be provided to the prosecutor without prepayment.	(b) The transcript must be provided to the prosecutor without prepayment.
(c) Transcripts provided to counsel must be filed with the court.	(c) Transcripts provided to counsel must be filed with the court.
(d) A party offering video or audio evidence may also provide a transcript of the exhibit, which becomes part of the record.	(d) A party offering video or audio evidence may also provide a transcript of the exhibit, which becomes part of the record.
Subd. 3. Papers and Exhibits. All papers and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.	Subd. 3. Papers and Exhibits. All papers and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.
Comment-Rule 11	**Comment-Rule 11**
~~*If a defendant does not plead guilty at the initial appearance before the district court under Rule 9, the Omnibus Hearing provided by Rule 11 shall be held. The initial appearance may be continued and if the defendant does not then plead guilty, the Omnibus Hearing shall be held as provided by*~~	*If a probable cause motion is made, the court must base its probable cause determination upon the evidence set forth in Rule 18.06, subd. 1. In State v. Florence, 306 Minn. 442, 446 239 N.W.2d 892, 896 (1976), the Supreme Court discussed the type of evidence that may be presented and considered*

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~~*the rule.*~~ ~~*The Omnibus Hearing provided by this rule is divided into three parts: (1) the Rasmussen hearing (Rule 11.02); (2) the hearing of pre-trial motions of the defendant and prosecution (Rule 11.04); (3) the hearing on other pre-trial issues brought up on the court's initiative (Rule 11.04). The hearings on any of these parts may be combined and heard simultaneously (Rule 11.07).*~~ ~~*The current statutory hearing on probable cause has been replaced under these rules by a motion to dismiss the complaint for lack of probable cause which is to be made in accordance with Rule 10 and heard at the Omnibus Hearing pursuant to Rule 11.03.*~~ *If* ~~*such a motion*~~*a probable cause motion is made, the court* ~~*shall*~~*must base its probable cause determination upon the evidence set forth in Rule 18.06, subd. 1. In State v. Florence, 306 Minn. 442,* *446,* *239 N.W.2d 892,* *896* *(1976), the Supreme Court discussed the type of evidence that may be presented and considered on a motion to dismiss the complaint for lack of probable cause. Nothing in that case or in the rule prohibits a defendant from calling any witness to testify for the purpose of showing an absence of probable cause. In determining whether to dismiss a complaint under Rule* ~~*11.03*~~*11.04 for lack of probable cause, the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest. Rather, under Florence, the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial.* ~~*If the defendant does not plead guilty upon the initial appearance in the district court under Rule 8 following a complaint or, where permitted, a tab charge or upon arraignment*~~	*on a motion to dismiss the complaint for lack of probable cause. Nothing in that case or in the rule prohibits a defendant from calling any witness to testify for the purpose of showing an absence of probable cause. In determining whether to dismiss a complaint under Rule 11.04 for lack of probable cause, the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest. Rather, under Florence, the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial.* *By the Omnibus Hearing, the prosecution will have given the Rasmussen and Spreigl notices; the Rasmussen hearing will have been either waived or demanded; the discovery required without order of court will have been completed; and pre-trial motions will have been served. (In the case of an indictment the pre-trial motions should include any motion to suppress based on the disclosures contained in the Rasmussen notice under Rule 19.04, subd. 6(1)).* *The purpose of the Omnibus Hearing is to avoid a multiplicity of court appearances on these issues with a duplication of evidence and to combine all of the issues that can be disposed of without trial into one appearance. Early resolution of motions provides for more efficient handling of criminal cases at subsequent stages. This includes suppression motions, evidentiary motions, and nonevidentiary motions such as motions to disclose the identity of an informant or to consolidate or sever trials or co-defendants. Early resolution of these motions also helps to focus the lawyers' attention on a smaller number of witnesses, including law enforcement officers and victims of crimes. When such motions are resolved early, uncertainty with respect to many significant*

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~~in the district court under Rule 19.04, subd. 5 following an indictment, the Omnibus Hearing (See ABA Standards, Discovery and Procedure Before Trial, 1.1, 5.1-5.3 (Approved Draft, 1970)) shall be held as provided by Rule 11 not later than twenty-eight (28) days after the initial appearance or arraignment, unless the period is extended for good cause related to the particular case (Rules 8.04; 19.04, subd. 5).~~ *By ~~that~~the ~~time~~Omnibus Hearing, the prosecution will have given the Rasmussen and Spreigl notices ~~(Rules 7.01; 7.02; 19.04, subd. 6(1) and (2))~~; the Rasmussen hearing will have been either waived or demanded ~~(Rule 8.03)~~; the discovery required without order of court will have been completed ~~(Rules 7.04; 19.04, subd. 7; 9.01, subd. 1; 9.02, subd. 1)~~; and pre-trial motions will have been served ~~(Rules 10.04, subd. 1; 9.01, subd. 2; 9.02, subd. 2; 9.03, subd. 8; 18.02, subd. 2; 18.05, subds. 1 and 2; 17.03, subds. 3 and 4; 17.04; 17.06, subd. 3; 20.01, subd. 2; 20.03, subd. 1)~~. (In the case of an indictment the pre-trial motions should include any motion to suppress based on the disclosures contained in the Rasmussen notice under Rule 19.04, subd. 6(1)).* *The purpose of the Omnibus Hearing is to avoid a multiplicity of court appearances ~~and hearings upon~~on these issues with a duplication of evidence and to combine all of the issues that can be disposed of without trial into one appearance ~~and hearing~~. ~~See ABA Standards, Discovery and Procedure Before Trial, 1.1, 5.3 (Approved Draft, 1970)).~~ Early resolution of motions provides for more efficient handling of criminal cases at subsequent stages. This includes suppression motions, evidentiary motions, and nonevidentiary motions such as motions to disclose the identity of an informant or to consolidate or sever trials or co-defendants.*	*issues in a case are removed. This early resolution of motions also permits timely and meaningful pretrial dispositional conferences at which time the parties can engage in significant plea agreement discussions. Setting a firm trial date and commencing a trial on that date are also important factors in minimizing delays.* *By Rule 11.02 the court must also hear all motions made by the parties under Rule 10. A failure to raise known issues at the Omnibus Hearing waives that issue except lack of jurisdiction or failure of the complaint or indictment to state an offense, unless the court grants an exception to the waiver (Rule 10.03).* *Rule 11.02 specifically permits a motion to dismiss a complaint for lack of probable cause, but does not permit a motion to dismiss an indictment upon this ground. See Rule 19.04, subd. 5.* *The court must also on its initiative under Rule 11.02 ascertain and hear any other issues that can be heard and disposed of before trial and any other matters that would promote a fair and expeditious trial. This would include requests or issues arising respecting discovery (Rule 9), evidentiary issues arising from the Spreigl notice (Rules 7.01, 19.04, subd. 6(2)), or other evidentiary issues, and expressly permits a pretrial dispositional conference if the court considers it necessary. (See Fed. R. Crim. P. 17.1.) If such resolution is not possible, the conference may be used to determine the nature of the case so that further hearings or trial may be scheduled as appropriate. The use of such dispositional conferences is commendable and highly recommended by the Advisory Committee. To assure that the pretrial dispositional conference portion of the Omnibus Hearing is meaningful, trial courts should insist on timely*

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Early resolution of these motions also helps to focus the lawyers' attention on a smaller number of witnesses, including law enforcement officers and victims of crimes. When such motions are resolved early, uncertainty with respect to many significant issues in a case are removed. This early resolution of motions also permits timely and meaningful pretrial dispositional conferences at which time the parties can engage in significant plea agreement discussions. Setting a firm trial date and commencing a trial on that date are also important factors in minimizing delays. ~~Firm trial dates are most likely to be found in courts that achieve early resolution of pretrial motions. Achieving early resolution of pretrial motions requires the cooperation of the court, the local bar and law enforcement agencies. When courts take early control of criminal cases with meaningful pretrial events it benefits all people within the criminal justice system and serves the efficient administration of justice.~~ *~~If a Rasmussen hearing has been demanded under Rule 8.03 or other similar evidentiary issues presented by motion or otherwise (Rules 11.02, subd. 1; 11.03; 11.04), they should be combined for hearing if possible (Rule 11.07).~~* *~~Rule 11.02 covers the Rasmussen hearing demanded under Rule 8.03 (or required by a motion to suppress in the case of an indictment). Upon the Rasmussen hearing under Rule 11.02 both parties may offer evidence and cross-examine the other's witnesses. The rule leaves to judicial interpretation the consequences of the defendant's testimony at a Rasmussen or similar evidentiary hearing, that is, whether it may be used against the defendant at trial substantively (See Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247~~*	*discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1.* *If the prosecutor has given notice under Rule 7.03 or 19.04, subd. 6(3) of intent to seek an aggravated sentence, Rule 11.04 requires the court to have a hearing to determine any pretrial issues that need to be resolved in connection with that request. This could include issues as to the timeliness of the notice under Rule 7.03 or 19.04, subd. 6(3). The court must determine whether the proposed grounds legally support an aggravated sentence and whether or not the proffered evidence is sufficient to proceed to trial. The rule does not provide a standard for determining insufficiency of the evidence claims and that is left to case law development. If the aggravated sentence claim will be presented to a jury, the court must also decide whether the evidence will be presented in a unitary or a bifurcated trial and the rule provides the standards for making that determination. Even if a unitary trial is ordered for the presentation of evidence, the rule recognizes that presentation of argument on an aggravated sentence during the guilt phase of the proceedings may unduly prejudice a defendant. The rule therefore allows the court to order separate final arguments on the aggravated sentence issue, if necessary, after the jury renders its verdict on the issue of guilt.* *Under State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn. 1980), if the prosecutor intends to impeach the defendant or any defense witness with evidence of prior convictions, the prosecutor must request a pretrial hearing on the admissibility of such evidence. If possible this issue should be heard at the Omnibus Hearing. See Rule 9.01, subd. 1(5) as to the reciprocal duties of the prosecutor and defense counsel to disclose the criminal records of the*

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~~(1968)) or by way of impeachment (cf. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971)).~~	*defendant and any defense witnesses. As to the standards for determining the admissibility of the impeachment evidence, see Rule 609 of the Minnesota Rules of Evidence, State v. Jones, 271 N.W.2d 534 (Minn. 1978) and State v. Brouillette, 286 N.W.2d 702 (Minn. 1979).*
~~Rule 11.02, subd. 1 permits any party offering a videotape or audiotape exhibit to also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.~~	*By Rule 11.06 the Omnibus Hearing or any part may be continued if necessary to dispose of the issues presented. At any conference portion of an Omnibus Hearing it is permissible under Rule 11.06 to continue the evidence suppression portion of the Omnibus Hearing until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. Such a continuance would be "for good cause related to the case" under Rule 11.06, and under that rule the court could enter an order continuing both the Omnibus Hearing and the court's decision on the evidentiary issues until the day of trial. Other grounds may also support a continuance as long as the court finds that the continuance is justified under the rule. However, the court should not as a general rule or practice bifurcate the Omnibus Hearing or delay the hearing or any part of it until the day of trial when that is not justified by the circumstances of the case. To do so violates the purpose of these rules. See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing.*
~~In State v. Scales, 518 N.W.2d 587 (Minn. 1984), the court held that all custodial interrogation including any information about rights, any waiver of those rights, and all questioning must be electronically recorded in a place of detention and, if feasible, in any other place. Any "substantial" violation of this recording requirement requires suppression of any statements thereby obtained.~~	
By Rule ~~11.03~~11.02 the court ~~shall~~must also hear all motions made by the parties under Rule 10. ~~(See also Rules 9.01, subd. 2; 9.02, subd. 2; 9.03, subd. 5; 9.03, subd. 8, 18.02, subd. 2; 18.05, subd. 1 and subd. 2; 17.03, subd. 3 and subd. 4; 17.04; 17.06; 17.06, subd. 3; 20.01, subd. 2; 20.03, subd. 1.) Motions not made upon grounds then known and available to the parties are waived,~~A failure to raise known issues at the Omnibus Hearing waives that issue except lack of jurisdiction or failure of the complaint or indictment to state an offense, unless the court grants an exception to the waiver (Rule 10.03).	*Rule 11.07 requires appropriate findings for the determinations made on the Omnibus Hearing issues.*
Rule ~~11.03~~11.02 specifically permits a	*The intent of the Omnibus Hearing rule is that all issues that can be determined before trial must be heard at the Omnibus Hearing*

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motion to dismiss a complaint for lack of probable cause, but does not permit a motion to dismiss an indictment upon this ground. See Rule 19.04, subd. 5. *The court ~~shall~~must also on its initiative under Rule ~~11.04~~11.02 ascertain and hear any other issues that can be heard and disposed of before trial and any other matters that would promote a fair and expeditious trial. This would include requests or issues arising respecting discovery (Rule 9), evidentiary issues arising from the Spreigl notice (Rules 7.01, 19.04, subd. 6(2)), or other evidentiary issues, and expressly permits a pretrial dispositional conference if the court considers it necessary. (See Fed. R. Crim. P. 17.1.) ~~Many judicial districts already make widespread and effective use of pretrial dispositional conferences to resolve cases at the earliest possible time.~~ If such resolution is not possible, the conference may be used to determine the nature of the case so that further hearings or trial may be scheduled as appropriate. The use of such dispositional conferences~~,~~ is commendable and highly recommended by the Advisory Committee. To assure that the pretrial dispositional conference portion of the Omnibus Hearing is meaningful, trial courts should insist on timely discovery by the parties before the date of the Omnibus Hearing as required by Rule 9.01, subd. 1. ~~The Advisory Committee also strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet prior to the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and later may be included with any presentence investigation report required under Rule 27.03, subd. 1.~~* *If the ~~prosecuting attorney~~prosecutor has given notice under Rule 7.03 or 19.04, subd.*	*and decided before trial. Consequently, when the Omnibus Hearing is held before a judge other than the trial judge, the trial judge, except in extraordinary circumstances will adhere to the findings and determinations of the Omnibus Hearing judge. See State v. Coe, 298 N.W.2d 770, 771-72 (Minn. 1980) and State v. Hamling, 314 N.W.2d 224, 225 (Minn. 1982) (where this issue was discussed, but not decided).* *Rule 11.08 further provides that the defendant may enter a plea including a not guilty plea at the first Omnibus Hearing appearance. This assures that if a defendant wishes to demand a speedy trial under Rule 11.09, the running of the time limit for that will not be delayed by continuing the plea until the continued Omnibus Hearing. If the trial date is continued, see Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of the continuance.* *For good cause the trial may be postponed beyond the 60-day time limit upon request of the prosecutor or the defendant or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115, 120 (Minn. 1989). Even if good cause exists for postponing the trial beyond the 60-day time limit, the defendant, except in exigent circumstances, must be released, subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1, if trial has not yet commenced within 120 days after the demand is made and the not guilty plea entered. Other sanctions for violation of these speedy trial provisions are left to case law. See State v. Kasper, 411 N.W.2d 182 (Minn. 1987) and State v. Friberg, 435 N.W.2d 509 (Minn. 1989).*

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6(3) of intent to seek an aggravated sentence, Rule 11.04 requires the court to have a hearing to determine any pretrial issues that need to be resolved in connection with that request. This could include issues as to the timeliness of the notice under Rule 7.03 or 19.04, subd. 6(3). The court must determine whether the proposed grounds legally support an aggravated sentence and whether or not the proffered evidence is sufficient to proceed to trial. The rule does not provide a standard for determining insufficiency of the evidence claims and that is left to case law development. If the aggravated sentence claim will be presented to a jury, the court must also decide whether the evidence will be presented in a unitary or a bifurcated trial and the rule provides the standards for making that determination. Even if a unitary trial is ordered for the presentation of evidence, the rule recognizes that presentation of argument on an aggravated sentence during the guilt phase of the proceedings may unduly prejudice a defendant. The rule therefore allows the court to order separate final arguments on the aggravated sentence issue, if necessary, after the jury renders its verdict on the issue of guilt. ~~*By Rule 11.05 the complaint may be amended at the Omnibus Hearing as provided by Rule 17.05. (See also Rules 3.04, subd. 2; 17.06, subd. 4.)*~~ ~~*One of the issues that should be determined at the Omnibus Hearing is the admissibility of the testimony, of any proposed witness who has been subjected to a hypnotic interview concerning the facts of the case. Ordinarily under State v. Mack, 292 N.W.2d 764 (Minn. 1980) the testimony of a previously hypnotized witness concerning the subject matter adduced at a pretrial hypnotic interview may not be admitted in a criminal proceeding. Such testimony may be elicited only to the extent that*~~	*Rule 11.09 does not attempt to set arbitrary time limits (other than those resulting from the demand), because they would have to be circumscribed by numerous specific exclusions (See ABA Standards, Speedy Trial, 2.3 (Approved Draft, 1968)) which are covered in any event by the more general terms of the rule. (See ABA Standards, Speedy Trial, 4.1, Pre-Trial Release, 5.10 (Approved Drafts, 1968) in which the consequences are set forth.)* *The consequences and the time limits beyond which a defendant is considered to have been denied the constitutional right to a speedy trial are left to judicial decision. See Barker v. Wingo, 407 U.S. 514, 519-36 (1972). The constitutional right to a speedy trial is triggered not when the plea is entered but when a charge is issued or an arrest is made. State v. Jones, 392 N.W.2d 224, 235 (Minn. 1986). The existence or absence of the demand under Rule 11.10 provides a factor that may be taken into account in determining whether the defendant has been unconstitutionally denied a speedy trial. See Barker v. Wingo, supra.*

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~~*it covers matters previously and unequivocally disclosed by the witness to the authorities before the hypnosis.*~~ *Under State v. Wenberg, 289 N.W.2d 503, 504-05 (Minn. 1980), if the prosecutor intends to impeach the defendant or any defense witness with evidence of prior convictions, the prosecutor must request a pretrial hearing on the admissibility of such evidence. If possible this issue should be heard at the Omnibus Hearing. See Rule 9.01, subd. 1(5) as to the reciprocal duties of the prosecutor and defense counsel to disclose the criminal records of the defendant and any defense witnesses. As to the standards for determining the admissibility of the impeachment evidence, see Rule 609 of the Minnesota Rules of Evidence, State v. Jones, 271 N.W.2d 534 (Minn. 1978) and State v. Brouillette, 286 N.W.2d 702 (Minn. 1979).* ~~*If requested by motion under Rule 10, a hearing on the admissibility of evidence of additional offenses shall be held as part of the Omnibus Hearing. Before such evidence may be considered admissible it must be clear and convincing. Additionally, according to State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967) such evidence is admissible only if the prosecution's case is otherwise weak. Because it may not be possible to determine the strength of the prosecution's case until trial, it may be necessary to continue final determination of this issue under Rule 11.07 until that time. The court, however, should determine at the Omnibus Hearing whether the evidence to be presented is clear and convincing. If it does not meet that standard or the other requirements of Rule 404(b) of the Minnesota Rules of evidence then the court should determine before trial that the evidence is inadmissible. Unless a later determination is justified by good cause related to the particular case, Rule 11.07 requires that all*~~	

Original Language Showing Markup	Proposed Revised Language
~~*issues presented to the court at the Omnibus Hearing must be decided within 30 days after the defendant's initial appearance before the court under Rule 8.*~~ ~~*Under Rule 11.06 the defendant at the Omnibus Hearing may plead to the complaint or indictment or to a lesser or different offense as provided by Rules 14 and 15. See Rules 15.07 and 15.08 as to the standards and procedure for entering a plea to a lesser or a different offense.*~~ *By Rule ~~11.07~~11.06 the Omnibus Hearing or any part ~~thereof~~ may be continued if necessary to dispose of the issues presented. At any ~~dispositional~~ conference portion of an Omnibus Hearing it is permissible under Rule ~~11.07~~11.06 to continue the evidence suppression portion of the Omnibus Hearing until the day of trial if the court determines that resolution of the evidentiary issues would not dispose of the case. Such a continuance would be "for good cause related to the case" under Rule ~~11.07~~11.06, and under that rule the court could enter an order continuing both the Omnibus Hearing and the court's decision on the evidentiary issues until the day of trial. Other grounds may also support ~~such~~ a continuance ~~and~~ as long as the court finds that the continuance is justified under the rule. However, the court should not as a general rule or practice bifurcate the Omnibus Hearing or delay the hearing or any part of it until the day of trial when that is not justified by the circumstances of the case. To do so violates the purpose of these rules. ~~See Rule 1.02 and the comments thereto. All issues presented at the Omnibus Hearing shall be determined within 30 days after the defendant's initial appearance under Rule 8 unless a later determination is required for good cause related to the particular case. (See also Rule 10.04, subd. 2).~~ See Minn. Stat. §*	

Original Language Showing Markup	Proposed Revised Language
611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any change in the schedule of court proceedings. This would include the Omnibus Hearing as well as trial or any other hearing. *Rule 11.07 requires appropriate findings ~~upon~~ for the determinations made on the Omnibus Hearing issues~~ presented at the Omnibus Hearing in order that the basis for the determinations may clearly appear~~.* *~~Rule 11.08, subd. 1 requires that a record of the Omnibus Hearing shall be made, and Rule 11.08, subd. 2 prescribes the circumstances in which a transcript may be furnished to the parties. The verbatim record required by Rule 11.08, subd. 1, may be made by a court reporter or recording equipment.~~* *The intent of the Omnibus Hearing rule~~s~~ is that all issues that can be determined before trial ~~shall~~must be heard at the Omnibus Hearing and decided before trial. Consequently, when the Omnibus Hearing is held before a judge other than the trial judge, the trial judge, except in extraordinary circumstances will adhere to the findings and determinations of the Omnibus Hearing judge. See State v. Coe, 298 N.W.2d 770, 771-72 (Minn. 1980) and State v. Hamling, 314 N.W.2d 224, 225 (Minn. 1982) (where this issue was discussed, but not decided).* *~~A defendant who is not discharged following the Omnibus Hearing shall plead to the indictment or complaint in the district court or be given additional time within which to plead. If the defendant pleads not guilty, not guilty by reason of mental illness or mental deficiency, or double jeopardy or that prosecution is barred by Minn. Stat. § 609.035,~~*	

Original Language Showing Markup	Proposed Revised Language
~~*a trial date shall be set. (Rule 11.10) If the Omnibus Hearing or any part of it is continued pursuant to Rule 11.07,*~~ *Rule* ~~*11.10*~~*11.08 further provides that the defendant may enter a plea including a not guilty plea at the first Omnibus Hearing appearance. This assures that if a defendant wishes to demand a speedy trial under Rule* ~~*11.10*~~*11.09, the running of the time limit for that will not be delayed by continuing the plea until the continued Omnibus Hearing. If the trial date is continued, see Minn. Stat. § 611A.033 regarding the* ~~*prosecuting attorney's*~~*prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of the continuance.* ~~*Rule 11.10 provides that a defendant shall be brought to trial within 60 days after demand therefore is made by the prosecuting attorney or defendant, unless good cause is shown for a delay, but regardless of a demand, the defendant shall be tried as soon as possible. (Rule 11.10 supersedes Minn. Stat. § 611.04 (1971) requiring the defendant to be brought to trial at the next term of court.) See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act in relation to speedy trial demands.*~~ *For good cause the trial may be postponed beyond the 60-day time limit upon request of the* ~~*prosecuting attorney*~~ *prosecutor or the defendant or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115.* *120 (Minn. 1989). Even if good cause exists for postponing the trial beyond the 60-day time limit, the defendant, except in exigent circumstances, must be released, subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1, if trial has not yet*	

Original Language Showing Markup	Proposed Revised Language
commented within 120 days after the demand is made and the not guilty plea entered. Other sanctions for violation of these speedy trial provisions are left to case law. See State v. Kasper, 411 N.W.2d 182 (Minn. 1987) and State v. Friberg, 435 N.W.2d 509 (Minn. 1989). *Rule ~~11.10~~11.09 does not attempt to set arbitrary time limits (other than those resulting from the demand), because they would have to be circumscribed by numerous specific exclusions (See ABA Standards, Speedy Trial, 2.3 (Approved Draft, 1968)) which are covered in any event by the more general terms of the rule. (See ABA Standards, Speedy Trial, 4.1, Pre-Trial Release, 5.10 (Approved Drafts, 1968) in which the consequences are set forth.)* ~~*Rule 11.10 does not specify the consequences of a failure to bring the defendant to trial within the time limits set by the rule. (This differs from ABA Standards, Speedy Trial, 4.1, Pre-Trial Release, 5.10 (Approved Drafts, 1968) in which the consequences are set forth).*~~ *The consequences and the time limits beyond which a defendant is considered to have been denied the constitutional right to a speedy trial are left to judicial decision. ~~(~~See Barker v. Wingo, 407 U.S. 514, 519-36 (1972).~~)~~ The constitutional right to a speedy trial is triggered not when the plea is entered but when a charge is issued or an arrest is made. State v. Jones, ~~391~~392 N.W.2d 224, 235 (Minn. 1986). The existence or absence of the demand under Rule 11.10 provides a factor that may be taken into account in determining whether the defendant has been unconstitutionally denied a speedy trial. ~~(~~See Barker v. Wingo, supra.~~)~~* ~~*Under Rule 11.10 the time period following*~~	

Original Language Showing Markup	Proposed Revised Language
~~*the demand does not begin to run earlier than the date of the plea of not guilty, not guilty by reason of mental illness or mental deficiency, or double jeopardy or that prosecution is barred by Minn. Stat. § 609.035. However, under Rule 11.10, the defendant may insist on the right to enter such a plea at the first Omnibus Hearing appearance even if the hearing is continued. This will assure that a defendant can get the speedy trial time limit running even if some Omnibus Hearing issues are continued for later decision by the court. The plea other than guilty was selected as the crucial date because the defendant is not required to so plead until at or after the Omnibus Hearing (Rules 8.03; 11.06; 11.10) and by that time all discovery and pre-trial proceedings will have been substantially completed. If the demand is made before such plea, the 60-day period starts to run upon entry of the plea. It is contemplated that when the pre-trial proceedings have been completed, the court will require the defendant to enter a plea, if the defendant has not already done so, in order that the defendant cannot delay the trial by intentionally delaying the plea. (Rule 11).*~~	

Proposed Revisions to Minn. R. Crim. P. 12

Original Language Showing Markup	Proposed Revised Language
Rule 12. Pretrial Conference and Evidentiary Hearing in Misdemeanor Cases	**Rule 12. Pretrial Conference and Evidentiary Hearing in Misdemeanor Cases**
Rule 12.01 Pretrial Conference	**Rule 12.01 Pretrial Conference**
~~A~~In misdemeanor cases, the court may schedule a pretrial conference~~ may be held in such cases and at such time as the court orders to consider the motions and other issues referred to in Rules 12.02 and 12.03~~. ~~Such motions and other issues shall be heard immediately prior to trial whenever there has been no~~If the court does not hold a pretrial conference~~, or whenever the court has so ordered for the purpose of hearing witnesses or for other good cause~~pretrial motions and other issues must be heard immediately before trial.	In misdemeanor cases, the court may schedule a pretrial conference. If the court does not hold a pretrial conference, pretrial motions and other issues must be heard immediately before trial.
Rule 12.02 Motions	**Rule 12.02 Motions**
The court ~~shall~~must hear and determine all motions made by the ~~defendant or prosecution~~parties and receive ~~such~~ evidence ~~as may be~~ offered in support of or opposition to the motion. ~~The defendant may offer evidence in defense, and the defendant and prosecution~~ A party may cross-examine ~~the other's witnesses~~any witness called by any other party.	The court must hear and determine all motions made by the parties and receive evidence offered in support of or opposition to the motion. A party may cross-examine any witness called by any other party.
Rule 12.03 Other Issues	**Rule 12.03 Other Issues**
The court ~~shall ascertain~~must hear and determine any ~~other~~ constitutional, evidentiary, procedural ~~or~~and other issues that may be ~~heard or disposed of~~resolved before trial and ~~such~~resolve other matters ~~as will~~that promote a fair and expeditious trial~~.~~. ~~and shall hear and determine them, or~~ The court may continue the hearing for that purpose.	The court must hear and determine any constitutional, evidentiary, procedural and other issues that may be resolved before trial and resolve other matters that promote a fair and expeditious trial. The court may continue the hearing for that purpose.
~~If the prosecution has given notice under Rule 7.02 of intention to offer evidence of additional offenses, upon motion a hearing shall be held to determine their admissibility under Rule 404(b) of the Minnesota Rules of Evidence and whether there is clear and convincing evidence that~~	

~~defendant committed the offenses.~~

Rule 12.04 Hearing on Evidentiary Issues

Subd. 1. Evidence and Identification Procedures. ~~If the defendant or the prosecution has demanded a hearing on the~~The court must hear and determine any issues specified ~~by~~in Rule 7.01~~, the court shall hear and determine the issue upon such evidence as may be offered by the~~if the defendant or prosecutor ~~or the defense~~demands a hearing. ~~If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record.~~

Subd. 2. Additional Offenses. If the prosecutor gives notice under Rule 7.02 of additional offenses and the defendant moves for a hearing, the court must determine the admissibility of that evidence under Rule 404(b) of the Minnesota Rules of Evidence, and also determine whether clear and convincing evidence exists that the defendant committed the additional offenses.

~~Subd. 2. Cross-Examination. Upon such hearing, the defendant and the prosecution may cross-examine the other's witnesses as to the evidentiary and identification issues raised as specified in Rule 7.01.~~

Subd. 3. Time. ~~Any~~When a trial is to be heard by a jury, the evidentiary hearing ~~shall~~must be held separately from ~~the trial when the trial is to be before a~~ the jury trial. ~~and in the discretion of~~ When a trial is to be heard by the court, the evidentiary hearing may be held ~~either~~ separately or as part of the court trial ~~when the trial is to the court~~. ~~Any~~A separate evidentiary hearing ~~shall~~must be held immediately ~~prior~~before ~~to~~ trial unless the court ~~for~~finds good cause to otherwise order~~s~~.

Rule 12.05 ~~Amendment of~~Amended Complaint

The complaint, if any, may be amended at the pretrial conference as prescribed by these rules.

Rule 12.04 Hearing on Evidentiary Issues

Subd. 1. Evidence and Identification Procedures. The court must hear and determine any issues specified in Rule 7.01 if the defendant or prosecutor demands a hearing.

Subd. 2. Additional Offenses. If the prosecutor gives notice under Rule 7.02 of additional offenses and the defendant moves for a hearing, the court must determine the admissibility of that evidence under Rule 404(b) of the Minnesota Rules of Evidence, and also determine whether clear and convincing evidence exists that the defendant committed the additional offenses.

Subd. 3. Time. When a trial is to be heard by a jury, the evidentiary hearing must be held separately from the jury trial. When a trial is to be heard by the court, the evidentiary hearing may be held separately or as part of the court trial. A separate evidentiary hearing must be held immediately before trial unless the court finds good cause to otherwise order.

Rule 12.05 Amended Complaint

The complaint, if any, may be amended at the pretrial conference as prescribed by these rules.

Rule 12.06 Pleas	**Rule 12.06 Pleas**
~~At the pretrial conference the~~The defendant may ~~be permitted to withdraw any prior plea and to~~ enter a ~~plea of~~ guilty plea to the charged offense ~~charged~~ or ~~such other~~a different offense, as permitted in Rule 15.08.	The defendant may enter a guilty plea to the charged offense or a different offense, as permitted in Rule 15.08.
Rule 12.07 Continuances~~;~~ and ~~Determination of Issues~~	**Rule 12.07 Continuances and Determination of Issues**
The ~~court may continue the~~ pretrial conference ~~as necessary and for the purpose of taking~~may be continued to take testimony or for other good cause, and may be continued ~~the determination of any issues or motions until~~to the day of trial to determine issues and motions. All motions and issues, including ~~those raised at the~~ evidentiary ~~hearing shall~~issues, must be ~~determined~~decided before trial ~~begins~~ unless otherwise agreed to by the ~~prosecution and the defense~~parties. ~~When the motions and issues are determined, the court shall make appropriate findings~~ Decisions must be in writing or ~~orally~~ on the record.	The pretrial conference may be continued to take testimony or for other good cause, and may be continued to the day of trial to determine issues and motions. All motions and issues, including evidentiary issues, must be decided before trial unless otherwise agreed to by the parties. Decisions must be in writing or on the record.
Rule 12.08 Record	**Rule 12.08 Record**
Subd. 1. Record. ~~Unless waived by counsel, a~~A verbatim record of the proceedings ~~at the evidentiary hearing shall~~must be made unless waived by the parties.	Subd. 1. Record. A verbatim record of the proceedings must be made unless waived by the parties.
Subd. 2. Audio and Video Evidence. If any party offers video or audio evidence, that party may provide a transcript of the evidence, which will be made a part of the record.	Subd. 2. Audio and Video Evidence. If any party offers video or audio evidence, that party may provide a transcript of the evidence, which will be made a part of the record.
Subd. ~~2~~3. Transcript and Filing. ~~Transcript and filing shall be governed by the provisions of~~ Rule ~~11.08~~11.10, subds. 2 and ~~subd.~~ 3 govern filings and obtaining a transcript.	Subd. 3. Transcript and Filing. Rule 11.10, subds. 2 and 3 govern filings and obtaining a transcript.
Comment—Rule 12	**Comment—Rule 12**
~~*There will be no Omnibus Hearing required for misdemeanors (see Rule 11). There is no necessity for a probable cause determination for misdemeanors. A Rasmussen hearing usually can be conducted on the same day as the trial.*~~	*This rule permits the court to order a pre-trial conference. Any Rasmussen issues will ordinarily be heard immediately before trial. At the pretrial conference the court will consider the same matters for which an Omnibus Hearing must be*

~~*The multiplicity of court appearances and hearings which prompted the establishment of an Omnibus Hearing for felonies and gross misdemeanors (see the comments to Rule 11) is not a problem in misdemeanor cases. Thus, no Omnibus Hearing is necessary. Rather, this*~~ *This rule* ~~*prescribes*~~*permits the court to order* ~~*that*~~ *a pre-trial conference.* ~~*may be held in such cases and at such times as the court may order and any*~~*Any Rasmussen* ~~*hearing*~~*issues will ordinarily be* ~~*conducted*~~*heard immediately* ~~*prior to*~~*before trial.* ~~*Trial courts are encouraged to hold pretrial conferences, especially in jury cases. Since a jury trial would normally last a day or longer, requiring the investment of time and expense, a pretrial conference which may settle the case without a trial, appears justified. If a pretrial conference is scheduled, it should be held at such times as the court orders and ordinarily the courts should order it held before the day of trial so that witnesses and jurors will be spared the inconvenience of appearing for trial in a case that is settled.*~~ *At the pretrial conference the court will consider the same matters* ~~*upon*~~*for which an Omnibus Hearing must be held in felony and gross misdemeanor cases (see Rule 11).* ~~*Under Rule 12.02 the court should hear and determine all motions made under Rule 10 (see also Rules 7.03; 17.03, subds. 3 and 4; 17.04; 17.06; 17.06, subd. 3; and 17) by the prosecutor or the defendant and receive any evidence subject to cross-examination by the other party, unless the court grants an exception to the waiver (Rule 10.03). Motions that are not made upon grounds then known and available to the parties are waived, with the exception of those for lack of jurisdiction over the offense or failure of the complaint to state an offense. At the conference the court on its initiative under Rule 12.03 shall also ascertain and hear any other issues that can be heard and disposed of before trial. This would include requests or issues arising from the Spreigl notice (Rule 7.02), and any other matters which would promote a fair and expeditious trial. If no pretrial conference is held, any motions and issues under Rules 12.02 and 12.03 which arise should be heard (Rule 12.01) and determined (Rule 12.07)*~~	*held in felony and gross misdemeanor cases (see Rule 11).* *Rule 12.08, subd. 2, permits any party offering video or audio evidence to also provide to the court a transcript of the evidence. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulated to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.* *Rule 12.07 provides for the continuation of the pretrial conference if necessary to dispose of the issues presented. For the purpose of taking testimony or other good cause the court may continue the determination of issues or motions until the day of trial. Such a continuance, where testimony is required, will save witnesses an additional court appearance where those witnesses would be testifying at trial.*

immediately prior to trial.

Under State v. Wenberg, 289 N.W.2d 503 (Minn.1980), if the prosecutor intends to impeach the defendant or any defense witness with evidence of prior convictions, the prosecutor must request a pretrial hearing on the admissibility of such evidence. See Rule 609 of the Minnesota Rules of Evidence, State v. Jones, 271 N.W.2d 534 (Minn.1978), and State v. Brouillette, 286 N.W.2d 702 (Minn.1979) as to the standards for determining the admissibility of such impeachment evidence.

If requested by motion under Rule 10, a hearing on the admissibility of evidence of additional offenses shall be held pursuant to Rule 12.03. Before such evidence may be considered admissible it must be clear and convincing. Additionally, according to State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967) such evidence is admissible only if the prosecution's case is otherwise weak. Because it may not be possible to determine the strength of the prosecution's case until trial, it may be necessary to continue final determination of this issue under Rule 12.07 until that time. The court, however, should determine before trial whether the evidence to be presented is clear and convincing. If it does not meet that standard or the other requirements of Rule 404(b) of the Minnesota Rules of Evidence then the court should determine before trial that the evidence is inadmissible. Unless it is not possible to do so, Rule 12.07 requires that all issues presented to the court under Rule 12 must be decided before trial.

Either at or before a pretrial conference, or at least seven days before trial if no conference is held, the prosecutor must serve the Rasmussen and Spreigl notice (Rules 7.01 and 7.02). Any other pretrial motions should be served at least three days before the conference or at least three days before trial if no conference is held (Rules 7.03; 10.04, subd. 1; 17.03, subds. 3 and 4; 17.04; 17.06; 17.06, subd. 3; and 17).

Rule 12.04 covers the Rasmussen hearing demanded under Rule 5.04, subd. 4. Under Rule 12.04, subd. 3 any Rasmussen hearing would be held separately from any jury trial, but may be held either separately or as part of the trial when

~~*trial is to the court. Any separate hearing should be held immediately prior to trial unless the court for good cause orders that it be held at a different time. This procedure continues substantially the present practice under City of St. Paul v. Page, 285 Minn. 374, 173 N.W.2d 460 (1969).*~~

~~*At the Rasmussen hearing, both parties may offer evidence (Rule 12.04, subd. 2) and cross-examine the other's witnesses (Rule 12.04, subd. 3). The rule leaves to judicial interpretation the consequences of the defendant's testimony at a Rasmussen or similar evidentiary hearing as to whether it can be used against the defendant at trial substantively (see Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)) or by way of impeachment (cf. Harris v. New York, 401 U.S. 222 (1971)).*~~

Rule ~~12.04, subd. 1~~12.08, subd. 2, permits any party offering ~~a~~ video~~tape~~ or audio~~tape exhibit~~ evidence to also provide to the court a transcript of the ~~tape~~evidence. This rule does not govern whether any such transcript is admissible as evidence in the case. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulated to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.

~~*By Rule 12.05 the complaint may be amended at the pre-trial conference as provided by Rule 17.05 (see also Rules 3.04, subd. 2 and 17.06, subd. 4).*~~

~~*By Rule 12.06 the defendant at the pretrial conference may plead to the complaint or tab charge or to such other different offense as is permitted by Rule 15.08.*~~

Rule 12.07 provides for the continuation of the pretrial conference if necessary to dispose of the issues presented. For the purpose of taking testimony or other good cause the court may continue the determination of issues or motions until the day of trial. Such a continuance, where testimony is required, will save witnesses an additional court appearance where those witnesses would be testifying at trial. ~~Where no pretrial conference is held, any motions raised by~~

~~*the parties shall be heard on the day of the trial (Rule 10.04, subd. 2). All motions and issues including those raised at a separate evidentiary hearing shall be determined before trial begins unless otherwise agreed to by the prosecution and the defense. Findings may be made either in writing or orally on the record.*~~ ~~*Rule 12.08, subd. 1 requires that a verbatim record of the evidentiary hearing be made by a court reporter, or recording equipment. Rule 12.08, subd. 2 prescribes the circumstances in which a transcript may be furnished to the parties. The record and all papers shall be filed with the clerk of the court in which the proceedings took place (Rule 12.08, subd. 2).*~~	

Proposed Revisions to Minn. R. Crim. P. 13

Original Showing Markup	Proposed Revised Language
~~Rule 13. Arraignment in Felony and Gross Misdemeanor Cases~~ ~~The arraignment shall be conducted as follows:~~ ~~Rule 13.01 In Open Court~~ ~~The arraignment shall be conducted in open court.~~ ~~Rule 13.02 Right to Counsel~~ ~~If the defendant other than a corporation appears without counsel, the court shall advise the defendant of the right to counsel, and when required, shall appoint counsel pursuant to Rule 5.02.~~ ~~Rule 13.03 Copy and Reading of Charges~~ ~~The defendant shall be provided with a copy of the complaint or indictment if it has not been previously provided. The complaint or indictment shall be read to the defendant unless the reading is waived. For designated gross misdemeanors as defined by Rule 1.04(b) prosecuted by tab charge pursuant to Rule 4.02, subd. 5(3), the tab charge shall be read to the defendant.~~ ~~Rule 13.04 Plea~~ ~~The defendant shall be called on to plead or may be given time to plead.~~ ~~Rule 13.05 Record~~ ~~A verbatim record of the arraignment shall be made.~~ **Comment—Rule 13** ~~*Arraignment as provided by Rule 13 will take place at the appearance of the defendant in the court under Rule 8 following a complaint*~~	**Deleted**

~~*charging a felony or gross misdemeanor or following entry of a tab charge for a designated gross misdemeanor as defined by Rule 1.04(b) or under Rule 19.04, subd. 4 and subd. 5 following an indictment. At that time the defendant may enter only a guilty plea. If the defendant does not wish to plead guilty, no other plea is to be entered then and the arraignment is continued until the Omnibus Hearing when pursuant to Rule 11.10 the defendant shall plead or be given additional time within which to plead. In the case of a complaint charging a felony or gross misdemeanor, the arraignment in the court under Rule 8.01 shall be held within 14 days after the defendant's initial appearance before a court (Rule 5.03), under Rule 5, and in the case of an indictment, within 7 days after the defendant's first appearance in the district court (Rule 19.04, subd. 1 and subd. 4). Of course the appearances under Rule 5 and Rule 8 could be consolidated pursuant to Rule 5.03 and the arraignment on the complaint or tab charge would then be held at that consolidated appearance.*~~ ~~*The requirement of Rule 13.01 that the arraignment shall be conducted in open court is taken from F.R.Crim.P. 10 and follows present Minnesota practice (Minn. Stat. § 630.01 (1971)).*~~ ~~*Rule 13.02 providing that the court shall advise the defendant of the right to counsel continues the requirements of Minn. Stat. §§ 611.15, 630.10 (1971).*~~ ~~*If the defendant has the right to counsel (See ABA Standards, Providing Defense Services, 4.1 (Approved Draft, 1968); State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967)), appears without counsel, and is financially unable to afford counsel, Rule 13.02 requires the court to appoint counsel unless the defendant knowingly and voluntarily waives the right (ABA Standards, Providing Defense Services, 7.1, 7.2 (Approved Draft, 1968)). The waiver shall be in writing (Minn. Stat. § 611.19 (1971); ABA Standards, Providing Defense Services, 7.3 (Approved Draft, 1968)) or under Rule 13.02 may be made orally*~~	

~~*before the court on the record.*~~ ~~*Rule 13.03 requiring that the defendant be provided with a copy of the indictment or complaint and that the indictment or complaint be read to the defendant unless waived continues the practice under Minn. Stat. § 630.11 (1971).*~~ ~~*Under Rule 13.04, the defendant shall be called on to plead (See F.R.Crim.P. 10), or shall be given such time as the court determines within which to plead. This follows present Minnesota practice (Minn. Stat. § 630.13 (1971)). If the defendant does not plead guilty, Rules 8.04 and 19.04, subd. 5 provide that an Omnibus Hearing under Rule 11 shall be scheduled within 28 days and 7 days respectively, and the defendant will not be required or permitted to plead earlier than that date.*~~ ~~*By Rule 11.10, if the defendant is not discharged following the Omnibus Hearing, the defendant shall plead to the complaint or, when authorized, the tab charge promptly or may be given additional time.*~~ ~~*When the defendant pleads not guilty, a trial date shall be set (See Rule 11.10).*~~ ~~*When the defendant pleads guilty, the procedure prescribed by Rule 15 shall be followed.*~~	

Proposed Revisions to Minn. R. Crim. P. 14

Original Language Showing Markup	Proposed Revised Language
Rule 14. Pleas	**Rule 14. Pleas**
Rule 14.01 Pleas Permitted	**Rule 14.01 Pleas Permitted**
A defendant may plead ~~as follows~~:	A defendant may plead:
(a) Guilty.	(a) Guilty.
(b) Not guilty.	(b) Not guilty.
(c) Not guilty by reason of mental illness or mental deficiency.	(c) Not guilty by reason of mental illness or mental deficiency.
(d) Double jeopardy or ~~that~~ prosecution ~~is~~ barred by Minn. Stat. § 609.035 ~~(1971),. either of which~~ Either may be plead~~ed~~ with or without the plea of not guilty.	(d) Double jeopardy or prosecution barred by Minn. Stat. § 609.035. Either may be plead with or without the plea of not guilty.
Rule 14.02 Who May Plead	**Rule 14.02 Who May Plead**
Subd. 1. ~~By an Individual in~~ Felony and Gross Misdemeanor ~~Cases~~Charges. A plea in cases involving ~~to an indictment or complaint or, for a designated~~felony or gross misdemeanor charges ~~as defined by Rule 1.04(b), a tab charge~~must be made by an individual defendant ~~shall be made orally on the record by the defendant~~ in person on the record.	Subd. 1. Felony and Gross Misdemeanor Charges. A plea in cases involving felony or gross misdemeanor charges must be made by an individual defendant in person on the record.
Subd. 2. ~~By an Individual in~~ Misdemeanor ~~Cases~~Charges. A plea ~~to a complaint or tab charge~~ in cases involving misdemeanor charges may be made by an individual defendant ~~shall be made orally~~either in person on the record ~~in person~~, by ITV, or by ~~the~~ petition to plead guilty ~~provided for in~~under Rule 15.03, subd. 2. The plea may be entered by counsel or by ITV if~~If~~ the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present~~, the plea may be entered by counsel in person or by ITV~~.	Subd. 2. Misdemeanor Charges. A plea in cases involving misdemeanor charges may be made by an individual defendant either in person on the record, by ITV, or by petition to plead guilty under Rule 15.03, subd. 2. The plea may be entered by counsel or by ITV if the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present.

Subd. 3. ~~By a Corporation~~Corporate Defendant. A plea by a corporate defendant ~~shall~~must be made by counsel or an authorized corporate officer~~;. and shall~~The plea may be made ~~orally~~ on the record or in writing.	Subd. 3. Corporate Defendant. A plea by a corporate defendant must be made by counsel or an authorized corporate officer. The plea may be made on the record or in writing.
Subd. 4. Defendant's Refusal to Plead. If the defendant ~~stands mute or~~ refuses to plead, or if the court refuses to accept a plea of guilty, the court ~~shall~~must proceed as if the defendant had entered a plea of not guilty.	Subd. 4. Defendant's Refusal to Plead. If the defendant refuses to plead, or if the court refuses to accept a plea of guilty, the court must proceed as if the defendant had entered a plea of not guilty.
Subd. 5 Defendant Corporation's Failure to Appear. If a defendant corporation fails to appear, the court ~~upon proof of the commission of the offense charged~~ may enter judgment of conviction and impose ~~such~~ sentence as may be appropriate on proof of commission of the charged offense.	Subd. 5. Defendant Corporation's Failure to Appear. If a defendant corporation fails to appear, the court may enter judgment of conviction and impose sentence as may be appropriate on proof of commission of the charged offense.
Rule 14.03 ~~Time~~Timing of Pleas	**Rule 14.03 Timing of Pleas**
(a) In misdemeanor cases, the defendant may enter any plea, including a guilty plea, as early as the Rule 5 hearing.	(a) In misdemeanor cases, the defendant may enter any plea, including a guilty plea, as early as the Rule 5 hearing.
(b) In gross misdemeanor cases, the defendant may plead guilty at the Rule 5 hearing if the defendant has had an opportunity to consult with counsel; otherwise entry of a guilty plea must await the Rule 8 or Omnibus hearing. The defendant cannot enter any other plea until the Omnibus hearing.	(b) In gross misdemeanor cases, the defendant may plead guilty at the Rule 5 hearing if the defendant has had an opportunity to consult with counsel; otherwise entry of a guilty plea must await the Rule 8 or Omnibus Hearing. The defendant cannot enter any other plea until the Omnibus Hearing.
(c) In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus hearing.	(c) In felony cases, a defendant may plead guilty as early as the Rule 8 hearing. The defendant cannot enter any other plea until the Omnibus Hearing.
(d) ~~At any time during the proceedings, except as provided by Rule 8.01, a~~A defendant may also appear ~~before the~~ in court at proceedings after those listed above to ~~enter a plea of~~ plead guilty to the charged offense ~~charged or to some other offense pursuant to a plea agreement reached under Rule 15.04~~. To	(d) A defendant may also appear in court at proceedings after those listed above to plead guilty to the charged offense. To schedule an appearance, the defendant must file a written request with the court indicating the offense to which the defendant wishes to plead guilty. The court must schedule a hearing within 14

schedule ~~such~~ an appearance, the defendant ~~shall~~must file a written request with the ~~clerk of~~ court indicating the offense to which the defendant wishes to plead guilty. ~~Upon receiving such a request, the clerk shall~~The court must schedule ~~an appearance before the court at the earliest available date, which date, in any event, shall be not later than fourteen days after the filing of~~a hearing within 14 days after the request is filed. The ~~clerk shall~~court must then notify the defendant and the ~~prosecuting attorney~~prosecutor of the time and place of ~~such court appearance~~the hearing.

Comment—Rule 14

~~*Rule 14 adopts the pleas provided by Minn. Stat. § 630.28 (1971), and adds the plea of not guilty by reason of mental illness or mental deficiency as defined by Minn. Stat. § 611.026 (1971) with its judicial interpretations, and the plea of the bar provided by Minn. Stat. § 609.035 (1971).*~~ *Notice of a defense or defenses under Rule 9.02, subd. 1(~~*~~3~~*5)~~*(a)* *does not obviate the necessity for a plea under Rule 14.*

*Rule 20.02, subd*s*. 6(2) and ~~(5)~~7, governing the procedure upon the defense of mental illness or mental deficiency, contemplate that a defendant shall plead both not guilty and not guilty by reason of mental illness or ~~mental~~ deficiency when intending to put in issue both guilt ~~of~~on the elements of the offense charged and mental responsibility by reason of mental illness or ~~mental~~ deficiency.*

A conditional plea of guilty may not be entered ~~whereby~~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 ~~865~~ 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. 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).

In misdemeanor cases, by Rule 14.02, subd. 2, before accepting such a plea through

days after the request is filed. The court must then notify the defendant and the prosecutor of the time and place of the hearing.

Comment—Rule 14

Notice of a defense or defenses under Rule 9.02, subd. 1(5) does not obviate the necessity for a plea under Rule 14.

Rule 20.02, subd. 6(2) and 7, governing the procedure upon the defense of mental illness or mental deficiency, contemplate that a defendant shall plead both not guilty and not guilty by reason of mental illness or deficiency when intending to put in issue both guilt on the elements of the offense charged and mental responsibility by reason of mental illness or deficiency.

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. 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).

In misdemeanor cases, by Rule 14.02, subd. 2, before accepting such a plea through

of conviction. Id. 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). ~~*Rule 14.02, subd. 1 continues the requirement of Minn. Stat. § 630.28 (1971) that the plea shall be made orally on the record.*~~ ~~*Rule 14.02, subd. 2, unlike Minn. Stat. § 630.29, permits a plea of guilty or not guilty to a misdemeanor to be made by counsel, with the permission of the court. Otherwise, the plea shall be made in person except in the case of a corporation.*~~ *In misdemeanor cases, by Rule 14.02, subd. 2, before accepting such a plea through counsel, the court should determine whether counsel has advised the defendant of the rights and information contained in Rule 15.02*~~*, and whether the plea would be acceptable under Rule 15 if the defendant were present personally in court. The petition to plead guilty provided for in Rule 15.03, subd. 2 and in the Appendix B to Rule 15, if properly completed and filed with the court, constitutes a proper plea. The defendant need not be present when it is filed and accepted.*~~ *See also Rule 26.03, subd. 1(3) (defendant's presence at trial and sentencing) and Rule 27.03, subd. 2 (defendant's presence at sentencing).* ~~*If the court is satisfied that the defendant has knowingly and voluntarily decided to enter the plea and to waive the right to be present in court, then the court must allow the plea to be entered in the defendant's absence.*~~ ~~*By Rule 14.02, subd. 3, a plea by a corporation may be made orally or in writing by counsel or a corporate officer. (See Minn. Stat. § 630.16 (1971).)*~~ ~~*Rule 14.02, subd. 3 provides for the procedure when a corporation fails to appear in response to a summons or an order of court*~~	*counsel, the court should determine whether counsel has advised the defendant of the rights and information contained in Rule 15.02. See also Rule 26.03, subd. 1(3) (defendant's presence at trial and sentencing) and Rule 27.03, subd. 2 (defendant's presence at sentencing).*

~~*or otherwise. (This changes Minn. Stat. § 630.16 (1971).)*~~ ~~*Rule 14.02, subd. 4 governing the procedure when a defendant refuses to plead or when the court refuses to accept a plea of guilty follows the substance of Minn. Stat. § 630.34 (1971). The court should not refuse to accept a plea merely because the defendant is not present. The procedure upon a plea of guilty is set forth in Rule 15.*~~	

Proposed Revisions to Minn. R. Crim. P. 15

Original Language Showing Markup	Proposed Revised Language
Rule 15. Guilty Plea Procedures ~~Upon Plea of Guilty; Plea Agreements; Plea Withdrawal; Plea to Lesser Offense; Aggravated Sentence~~	**Rule 15. Guilty Plea Procedures**
Rule 15.01 ~~Acceptance of Plea; Questioning Defendant on Plea or Aggravated Sentence;~~ Felony and Gross Misdemeanor Cases	**Rule 15.01 Felony and Gross Misdemeanor Cases**
Subdivision 1. Guilty Plea.	**Subdivision 1. Guilty Plea.**
Before the ~~court~~judge accepts a guilty plea ~~of guilty~~, the defendant ~~shall~~must be sworn and questioned by the ~~court~~judge with the assistance of counsel as to the following:	Before the judge accepts a guilty plea, the defendant must be sworn and questioned by the judge with the assistance of counsel as to the following:
1. Name, age, ~~and~~ date and place of birth, and whether the defendant is disabled~~handicapped~~ in communication and, if so, whether a qualified interpreter has been provided for the defendant under Rule 8 of the General Rules of Practice for the District Courts.	1. Name, age, date and place of birth, and whether the defendant is disabled in communication and, if so, whether a qualified interpreter has been provided for the defendant under Rule 8 of the General Rules of Practice for the District Courts.
~~2. Whether the defendant understands the crime charged.~~	
2~~3~~. ~~Specifically, whether~~Whether the defendant understands that the crime charged is (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota ~~(and that the defendant is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser included offense of the crime charged)~~.	2. Whether the defendant understands that the crime charged is (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota.
3. Whether the defendant understands the defendant is pleading guilty to the offense of (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota, and understands the terms of the plea agreement, if any (state the terms with specificity).	3. Whether the defendant understands the defendant is pleading guilty to the offense of (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota, and understands the terms of the plea agreement, if any (state the terms with specificity).
4. The judge must ensure:	4. The judge must ensure:
a. ~~Whether the defendant has~~ The defendant had sufficient time to discuss the case with defense counsel.	a. The defendant had sufficient time to discuss the case with defense counsel.

b. ~~Whether the defendant~~The defendant is satisfied that defense counsel is fully informed as to the facts of the case, and ~~that~~ defense counsel ~~has~~ represented the defendant's interests and fully advised the defendant.	b. The defendant is satisfied that defense counsel is fully informed as to the facts of the case, and defense counsel represented the defendant's interests and fully advised the defendant.
c. Neither the defendant nor any other person has been given any promises other than those in the plea agreement, or been threatened by anyone, to get the defendant to plead guilty.	c. Neither the defendant nor any other person has been given any promises other than those in the plea agreement, or been threatened by anyone, to get the defendant to plead guilty.
d. The defendant had an opportunity to ask questions of the court or make a statement before stating the facts of the crime.	d. The defendant had an opportunity to ask questions of the court or make a statement before stating the facts of the crime.
5. The judge must determine whether the defendant: a. is under the influence of drugs or intoxicating liquor; b. has a mental disability; or c. is undergoing medical or psychiatric treatment.	5. The judge must determine whether the defendant: a. is under the influence of drugs or intoxicating liquor; b. has a mental disability; or c. is undergoing medical or psychiatric treatment.
6. The judge must also ensure defense counsel has told the defendant and the defendant understands:	6. The judge must also ensure defense counsel has told the defendant and the defendant understands:
a. ~~5. Whether the defendant has been told by defense counsel and understands that upon~~Upon a plea of not guilty, there is a right to a trial by jury and ~~that~~ a finding of guilty is not possible unless all jurors agree.	a. Upon a plea of not guilty, there is a right to a trial by jury and a finding of guilty is not possible unless all jurors agree.
b.~~6. a. Whether the defendant has been told by defense counsel and understands that there~~ There will not be a trial by either a jury or ~~by~~ a judge without a jury if the defendant pleads guilty.	b. There will not be a trial by either a jury or a judge without a jury if the defendant pleads guilty.
c~~b~~. ~~Whether the~~By pleading guilty the defendant waives the right to a trial by a jury or a judge on the issue of guilt.	c. By pleading guilty the defendant waives the right to a trial by a jury or a judge on the issue of guilt.
d~~7~~. ~~Whether the defendant has been told by defense counsel, and understands that if~~If the defendant ~~wishes to~~ pleads not guilty and ~~have~~has a trial by jury or ~~by a~~ judge, the defendant will be presumed to be innocent until proven guilty ~~is proved~~ beyond a reasonable doubt.	d. If the defendant pleads not guilty and has a trial by jury or judge, the defendant will be presumed to be innocent until proven guilty beyond a reasonable doubt.
e~~8~~. ~~a. Whether the defendant has been told by~~	e. If the defendant pleads not guilty and has a

~~defense counsel, and understands that if~~If the defendant ~~wishes to~~ pleads not guilty and ~~have~~has a trial, the prosecutor will be required to have the ~~prosecution~~ witnesses testify in open court in the defendant's presence, and ~~that~~ the defendant will have the right, through defense counsel, to question these witnesses.	trial, the prosecutor will be required to have the witnesses testify in open court in the defendant's presence, and the defendant will have the right, through defense counsel, to question these witnesses.
f~~b~~. ~~Whether the~~The defendant waives the right to have ~~these~~ witnesses testify in the defendant's presence in court and be questioned by defense counsel.	f. The defendant waives the right to have witnesses testify in the defendant's presence in court and be questioned by defense counsel.
g. ~~9. a. Whether the defendant has been told by defense counsel and understands that if~~If the defendant ~~wishes to~~ pleads not guilty and ~~have~~has a trial, the defendant will be entitled to require any defense witnesses to appear and testify.	g. If the defendant pleads not guilty and has a trial, the defendant will be entitled to require any defense witnesses to appear and testify.
h. ~~b. Whether the~~The defendant waives ~~this~~the right to subpoena witnesses.	h. The defendant waives the right to subpoena witnesses.
~~10. Whether defense counsel has told the defendant and the defendant understands:~~	
i. ~~a. That the~~The maximum penalty ~~that~~ the ~~court~~judge could impose for the crime charged (taking into consideration any prior ~~conviction or~~ convictions) is imprisonment for _____ months or _____years.	i. The maximum penalty the judge could impose for the crime charged (taking into consideration any prior convictions) is imprisonment for _____ months or _____years.
j. ~~b. That if~~If a minimum sentence is required by statute, the ~~court~~judge may impose a sentence of imprisonment of not less than _____ months for the crime charged.	j. If a minimum sentence is required by statute, the judge may impose a sentence of imprisonment of not less than _____ months for the crime charged.
~~c~~k. ~~that for~~For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.	k. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.
~~d~~l. ~~That if~~If the defendant is not a citizen of the United States, a ~~plea of~~ guilty plea ~~to the crime charged~~ may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.	l. If the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
e~~m~~. ~~That the~~The prosecutor is seeking an aggravated sentence (if applicable).	m. The prosecutor is seeking an aggravated sentence (if applicable).

~~11. Whether defense counsel has told the defendant that the defendant discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if the defendant entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)~~	
n~~12~~. ~~Whether defense counsel has told the defendant and the defendant understands that if~~If the court does not approve the plea agreement, the defendant has an absolute right to withdraw the ~~plea of~~ guilty plea and have a trial.	n. If the court does not approve the plea agreement, the defendant has an absolute right to withdraw the guilty plea and have a trial.
~~813. Whether, except for the plea agreement, any policeman, prosecutor, judge, defense counsel, or any other person, made any promises or threats to the defendant or any member of the defendant's family, or any of the defendant's friends, or other persons in order to obtain a plea of guilty.~~	
o. ~~14. Whether defense counsel has told the defendant and the defendant understands that if~~If the plea of guilty is ~~for any reason~~ not accepted by the court, or is withdrawn by the defendant, ~~with the court's approval,~~ or is ~~withdrawn by court order~~vacated on appeal or other review, ~~that~~ the defendant will stand trial on the original charge(s), ~~(charges) namely, (state the offense) (which would~~ including any charges ~~that were~~ dismissed ~~as a result of~~under the plea agreement~~),~~, and ~~that~~ the ~~prosecution could~~prosecutor may proceed just as if there had never been ~~any~~an agreement.	o. If the plea of guilty is not accepted by the court, or is withdrawn by the defendant, or is vacated on appeal or other review, the defendant will stand trial on the original charge(s), including any charges dismissed under the plea agreement, and the prosecutor may proceed just as if there had never been an agreement.
p~~15~~. ~~a. Whether the defendant has been told by defense counsel and understands, that if~~If the defendant ~~wishes to~~ pleads not guilty and ~~have~~has a jury trial, the defendant can decide to testify at trial ~~if the defendant wishes~~, but ~~that~~ if the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.	p. If the defendant pleads not guilty and has a jury trial, the defendant can decide to testify at trial, but if the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.
~~b~~q. ~~Whether the~~The defendant waives ~~this~~the right to testify, and agrees to tell the court about the facts of the crime.	q. The defendant waives the right to testify, and agrees to tell the court about the facts of the crime.
r~~16~~. ~~Whether~~The defendant with knowledge and understanding of all these rights ~~the defendant~~ still wishes to enter a plea of guilty or instead	r. The defendant with knowledge and understanding of all these rights still wishes to enter a plea of guilty or instead wishes to plead not

wishes to plead not guilty.	guilty.
7~~17~~. ~~Whether~~The judge must inquire whether the defendant makes any claim of innocence.	7. The judge must inquire whether the defendant makes any claim of innocence.
~~18. Whether the defendant is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.~~	
~~19. Whether the defendant has any questions to ask or anything to say before stating the facts of the crime.~~	
8~~20~~. The defendant must state~~What is~~ the factual basis for the plea.	8. The defendant must state the factual basis for the plea.
~~(NOTE: It is desirable that the defendant also be asked to acknowledge signing the Petition to Plead Guilty, suggested form of which is contained in Appendix A to these rules; that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them; that the defendant gave the answers set forth in the petition; and that they are true. If an aggravated sentence is sought, refer to subdivision 2 of this rule.)~~	
Subd. 2. Aggravated Sentence.	**Subd. 2. Aggravated Sentence.**
Before the ~~court~~judge accepts an admission of facts in support of an aggravated sentence, the defendant ~~shall~~must be sworn and questioned by the ~~court~~judge with the assistance of defense counsel~~.~~. ~~in addition to and~~This must be done separately from the inquiry that ~~may be~~is required by subdivision 1~~., as to the following:~~ The inquiry must include whether the defendant:	Before the judge accepts an admission of facts in support of an aggravated sentence, the defendant must be sworn and questioned by the judge with the assistance of defense counsel. This must be done separately from the inquiry that is required by subdivision 1. The inquiry must include whether the defendant:
1. ~~Whether the defendant understands~~Understands that the ~~prosecution~~prosecutor is seeking a sentence greater than the presumptive guideline sentence or an aggravated sentence~~ called for in the sentencing guidelines~~.	1. Understands that the prosecutor is seeking a sentence greater than the presumptive guideline sentence or an aggravated sentence.
2. ~~a. Whether the defendant understands~~Understands that the presumptive guideline sentence for the crime to which the defendant has pled guilty or otherwise has been	2. Understands that the presumptive guideline sentence for the crime to which the defendant has pled guilty or otherwise has been found guilty is _____, and that the defendant could

found guilty is _____, and that the defendant could not be given an aggravated sentence greater than the presumptive guideline sentence unless the prosecutor proves facts in support of such aggravated sentence beyond a reasonable doubt.	not be given an aggravated sentence greater than the presumptive guideline sentence unless the prosecutor proves facts in support of such aggravated sentence beyond a reasonable doubt.
3. ~~b. Whether the defendant understands~~Understands that the sentence in this case will be an aggravated sentence of _____, or will be left to the judge to decide.	3. Understands that the sentence in this case will be an aggravated sentence of _____, or will be left to the judge to decide.
4.~~3. a. Whether the defendant has~~Has had sufficient time to discuss this aggravated sentence with defense counsel.	4. Has had sufficient time to discuss this aggravated sentence with defense counsel.
5.~~b. Whether the defendant is~~Is satisfied that defense counsel is fully informed as to the facts supporting an aggravated sentence and has represented defendant's interests and fully advised the defendant.	5. Is satisfied that defense counsel is fully informed as to the facts supporting an aggravated sentence and has represented defendant's interests and fully advised the defendant.
6.~~4.~~ The judge must also ensure~~Whether~~ defense counsel has told the defendant ~~has been told by defense counsel~~ and defendant understands that: a. ~~even~~Even though the defendant has pled guilty to or has otherwise been found guilty of the crime of _____, defendant may ~~nonetheless deny~~contest the facts alleged by the ~~prosecution which would~~prosecutor that would support an aggravated sentence.	6. The judge must also ensure defense counsel has told the defendant and defendant understands that: a. Even though the defendant has pled guilty to or has otherwise been found guilty of the crime of _____, defendant may contest the facts alleged by the prosecutor that would support an aggravated sentence.
b. ~~5. a. Whether the defendant has been told by defense counsel and understands that if~~If defendant ~~chooses to deny~~contests the facts alleged in support of an aggravated sentence, the defendant has a right to a trial by ~~either~~ a jury or a judge to determine whether ~~those~~the facts have been proven, and that a finding that the facts are proven is not possible unless all jurors agree.	b. If defendant contests the facts alleged in support of an aggravated sentence, the defendant has a right to a trial by a jury or a judge to determine whether the facts have been proven, and that a finding that the facts are proven is not possible unless all jurors agree.
c. ~~b. Whether the~~The defendant waives the right to a trial by a jury or a judge of the facts in support of an aggravated sentence.	c. The defendant waives the right to a trial by a jury or a judge of the facts in support of an aggravated sentence.
d. ~~6. Whether the defendant has been told by defense counsel and understands that at such~~At trial before a jury or a judge, the defendant would be presumed not to be subject to an aggravated	d. At trial before a jury or a judge, the defendant would be presumed not to be subject to an aggravated sentence, and the court could not impose an aggravated sentence unless the facts in

sentence and the court could not impose an aggravated sentence unless the facts in support of the aggravated sentence are proven beyond a reasonable doubt.	support of the aggravated sentence are proven beyond a reasonable doubt.
e d.7. a. Whether the defendant has been told by defense counsel and understands that ifIf the defendant wishes to denycontests the facts alleged in support of an aggravated sentence and havehas a trial by a jury or a judge, the prosecutor will be required to have the prosecution witnesses testify in open court in the defendant's presence, and that the defendant will have the right, through defense counsel, to question these witnesses.	e .If the defendant contests the facts alleged in support of an aggravated sentence and has a trial by a jury or a judge, the prosecutor will be required to have the prosecution witnesses testify in open court in the defendant's presence, and the defendant will have the right, through defense counsel, to question these witnesses.
f. b. Whether theThe defendant waives the right to have these witnesses testify in the defendant's presence and be questioned by defense counsel.	f. The defendant waives the right to have witnesses testify in the defendant's presence and be questioned by defense counsel.
g. e.8. a. Whether the defendant has been told by defense counsel and understands that ifIf the defendant wishes to denycontests the facts alleged in support of an aggravated sentence and havehas a trial by a jury or a judge, the defendant will be entitled to require any defense witnesses to appear and testify.	g. If the defendant contests the facts alleged in support of an aggravated sentence and has a trial by a jury or a judge, the defendant will be entitled to require any defense witnesses to appear and testify.
h. b. Whether theThe defendant waives thisthe right to subpoena witnesses.	h. The defendant waives the right to subpoena witnesses.
i. 9. a. Whether the defendant has been told by defense counsel and understands that ifIf the defendant wishes to denycontests the facts in support of an aggravated sentence and havehas a trial by a jury or a judge, the defendant can decide to testify if the defendant wishes, but that if the defendant decides not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.	i. If the defendant contests the facts in support of an aggravated sentence and has a trial by a jury or a judge, the defendant can decide to testify if the defendant wishes, but if the defendant decides not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.
j. b. Whether theThe defendant waives thisthe right to remain silent and agrees to tell the court about the facts in supporting of an aggravated sentence.	j. The defendant waives the right to remain silent and agrees to tell the court about the facts supporting an aggravated sentence.
k.10. Whether, withWith knowledge and understanding of these rights, the defendant still wisheswants to admit the facts in support of an aggravated sentence or instead wisheswants to denycontest these facts and have a trial by a jury	k. With knowledge and understanding of these rights, the defendant still wants to admit the facts in support of an aggravated sentence or instead wants to contest these facts and have a trial by a jury or a judge.

or a judge.	
7. ~~11.~~ The defendant must state~~What is~~ the factual basis for an aggravated sentence.	7. The defendant must state the factual basis for an aggravated sentence.
~~(Note: Where a represented defendant is pleading guilty without an aggravated sentence, use the plea petition form in Appendix A to these rules. Where a represented defendant's plea agreement includes an admission to facts to support an aggravated sentence, use both Appendix A and Appendix E.~~ ~~Where an unrepresented defendant is pleading guilty without an aggravated sentence, use Appendix C to these rules. Where an unrepresented defendant's plea agreement includes an admission to facts to support an aggravated sentence, use both Appendix C and Appendix F.)~~	
Rule 15.02 ~~Acceptance of Plea; Questioning Defendant;~~ Misdemeanor Cases	**Rule 15.02 Misdemeanor Cases**
Subd. 1. Before the court accepts a plea of guilty to any misdemeanor offense punishable upon conviction by incarceration, ~~any~~the plea agreement ~~shall~~must be explained in open court. The defendant ~~shall~~must then be questioned by the court or counsel ~~in substance~~ as ~~follows~~to whether the defendant:	Subd. 1. Before the court accepts a plea of guilty to any misdemeanor offense punishable upon conviction by incarceration, the plea agreement must be explained in open court. The defendant must then be questioned by the court or counsel as to whether the defendant:
1. ~~Specifically whether the defendant understands~~Understands that the crime charged is (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota, ~~(~~and that the defendant is pleading guilty to the crime of (name of offense)~~)~~ committed on or about (Month) (Day) (Year) in _____ County, Minnesota.	1. Understands that the crime charged is (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota, and that the defendant is pleading guilty to the crime of (name of offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota.
2. ~~Whether the defendant realizes~~Understands that the maximum possible sentence is 90 days imprisonment and a fine in the amount allowed by applicable law. (Under the applicable law, if the maximum sentence is less, it should be so stated.)	2. Understands that the maximum possible sentence is 90 days imprisonment and a fine in the amount allowed by applicable law. (Under the applicable law, if the maximum sentence is less, it should be so stated.)
3. ~~Further, whether the defendant realizes~~Understands that, if the defendant is not a citizen of the United States, a ~~plea of~~ guilty plea ~~to the crime charged~~ may result in deportation, exclusion from admission to the United States, or	3. Understands that, if the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

denial of naturalization as a United States citizen.	
4.~~3. Whether the defendant knows~~Understands there is a right to the assistance of counsel at every stage of the proceedings and that defense counsel will be appointed for a defendant unable to afford counsel.	4. Understands there is a right to the assistance of counsel at every stage of the proceedings and that defense counsel will be appointed for a defendant unable to afford counsel.
5. ~~4. Whether the defendant knows of~~Understands and waives the right to:	5. Understands and waives the right to:
(a) ~~to~~ trial by the court or a jury and that a finding of guilty is not possible in a jury trial unless all jurors agree; (b) ~~to~~ confront and cross-examine all prosecution witnesses; (c) ~~to~~ subpoena and present defense witnesses; (d) ~~to~~ testify or remain silent at trial or at any other time; (e) ~~to~~ be presumed innocent and that the ~~State~~prosecutor must prove ~~its~~the case beyond a reasonable doubt; and (f) ~~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.	(a) trial by the court or a jury and that a finding of guilty is not possible in a jury trial unless all jurors agree; (b) confront and cross-examine all prosecution witnesses; (c) subpoena and present defense witnesses; (d) testify or remain silent at trial or at any other time; (e) be presumed innocent and that the prosecutor must prove the case beyond a reasonable doubt; and (f) a pretrial hearing to contest the admissibility at trial of any confessions or admissions or of any evidence obtained from a search and seizure.
~~5. Whether the defendant waives these rights.~~	
6. ~~Whether the defendant understands the~~ Understands the nature of the offense or offenses charged.	6. Understands the nature of the offense or offenses charged.
7. ~~Whether the defendant believes~~Believes that what the defendant did constitutes the offense to which the defendant is pleading guilty.	7. Believes that what the defendant did constitutes the offense to which the defendant is pleading guilty.
Subd. 2. After explaining the defendant's rights, ~~The court~~the judge, with the assistance of counsel, ~~if any, shall~~must question the defendant ~~then elicit sufficient facts from the defendant~~ to determine ~~whether there is~~ a factual basis for all elements of the offense to which the defendant is pleading guilty.	Subd. 2. After explaining the defendant's rights, the judge, with the assistance of counsel, must question the defendant to determine a factual basis for all elements of the offense to which the defendant is pleading guilty.
Subd. 3. ~~Where~~If the guilty plea is ~~being~~ entered at the defendant's first appearance in court, the statement as to the defendant's rights required by Rule 5.01 may be combined with the questioning required above prior to entry of a guilty plea.	Subd. 3. If the guilty plea is entered at the defendant's first appearance in court, the statement as to the defendant's rights required by Rule 5.01 may be combined with the questioning required above prior to entry of a guilty plea.

Rule 15.03 Alternative Methods in Misdemeanor Cases	**Rule 15.03 Alternative Methods in Misdemeanor Cases**
Subd. 1. Group Warnings. The ~~court~~judge may advise a number of defendants at once as to the their constitutional rights as specified in Rule 15.02, subd. 1, questions 2 through 5 above, and as to the consequences of a plea. ~~and as to their constitutional rights as specified in questions 2, 3 and 4 above. Before such a procedure is followed~~	Subd. 1. Group Warnings. The judge may advise a number of defendants at once as to the their constitutional rights as specified in Rule 15.02, subd. 1, questions 2 through 5 above, and as to the consequences of a plea.
Subd 2. ~~the~~The court ~~shall~~must first determine whether any defendant is ~~handicapped~~disabled in communication. If so, the court must provide the services of a qualified interpreter to ~~any such~~that defendant and should provide the warnings contemplated by this rule to ~~any such~~that defendant individually. The ~~court's~~judge's statement in a group warning ~~shall~~must be recorded and each defendant when called before the court ~~shall~~must be asked whether the defendant heard and understood the statement. The defendant ~~shall~~must then be questioned on the record as to the remaining matters specified in Rule 15.02.	Subd 2. The court must first determine whether any defendant is disabled in communication. If so, the court must provide the services of a qualified interpreter to that defendant and should provide the warnings contemplated by this rule to that defendant individually. The judge's statement in a group warning must be recorded and each defendant when called before the court must be asked whether the defendant heard and understood the statement. The defendant must then be questioned on the record as to the remaining matters specified in Rule 15.02.
Subd. 3~~2~~. Petition to Plead Guilty. ~~The~~ As an alternative to the defendant personally appearing in court, the defendant or defense counsel may file with the court a petition to plead guilty. ~~as provided for in the Appendix B to Rule 15~~The petition must be signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.	Subd. 3. Petition to Plead Guilty. As an alternative to the defendant personally appearing in court, the defendant or defense counsel may file with the court a petition to plead guilty. The petition must be signed by the defendant indicating that the defendant is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.
Rule 15.04 Plea Discussions and ~~Plea~~ Agreements	**Rule 15.04 Plea Discussions and Agreements**
Subd. 1. Propriety of Plea Discussions and ~~Plea~~ Agreements. ~~In cases in which it appears that it would serve the interest of the public in the effective administration of criminal justice under the principles set forth in Rule 15.04, subd. 3(2), the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement.~~ The ~~prosecuting attorney shall~~prosecutor must engage in plea discussions	Subd. 1. Propriety of Plea Discussions and Agreements. The prosecutor must engage in plea discussions and reach a plea agreement with the defendant only through defense counsel unless the defendant is pro se.

and reach a plea agreement with the defendant only through defense counsel unless the defendant is pro se.	
Subd. 2. Relationship Between Defense Counsel and Defendant. Defense counsel ~~shall conclude~~must enter into a plea agreement only with the consent of the defendant and ~~shall~~must ensure that the decision to enter a plea of guilty is ~~ultimately~~ made by the defendant.	Subd. 2. Relationship Between Defense Counsel and Defendant. Defense counsel must enter into a plea agreement only with the consent of the defendant and must ensure that the decision to enter a plea of guilty is made by the defendant.
Subd. 3. Responsibilities of the Trial Court Judge.	Subd. 3. Responsibilities of the Trial Court Judge.
(1) ~~Disclosure of Plea Agreement. If a plea agreement has been reached which contemplates entry of a plea of guilty, the trial court judge may permit the disclosure of the agreement and the reasons therefor in advance of the time for tender of the plea.~~ When ~~such~~a plea is ~~tendered~~entered and the defendant questioned, the trial court judge ~~shall~~must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it ~~shall so~~must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.	(1) When a plea is entered and the defendant questioned, the trial court judge must reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.
(2) ~~Consideration of Plea in Final Disposition.~~ The ~~court~~judge may accept a plea agreement of the parties when the interest of ~~the public in the effective administration of~~ justice would ~~thereby~~ be served. Among the considerations ~~which are~~ appropriate in determining whether ~~such~~ acceptance should be given are that: (a) ~~That the~~ defendant by pleading guilty has aided in ensuring the prompt and certain application of correctional measures; (b) ~~That the~~ defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct; (c) ~~That the~~ concessions will make possible the application of alternative correctional measures, which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant; (d) ~~That the~~ defendant has made trial unnecessary when ~~there are~~ good reasons exist for not having a trial;	(2) The judge may accept a plea agreement of the parties when the interest of justice would be served. Among the considerations appropriate in determining whether acceptance should be given are that: (a) defendant by pleading guilty has aided in ensuring the prompt and certain application of correctional measures; (b) defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct; (c) concessions will make possible the application of alternative correctional measures, which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant; (d) defendant has made trial unnecessary when good reasons exist for not having a trial;

(e) ~~That the~~ defendant has given or offered cooperation, which has resulted or may result in the successful prosecution of other offenders engaged in serious criminal conduct;

(f) ~~That the~~ defendant by pleading has aided in avoiding delay in the disposition of other cases and ~~thereby~~ has contributed to the efficient administration of criminal justice.

Rule 15.05 Plea Withdrawal

Subd. 1. To Correct Manifest Injustice. ~~The~~ At any time the court ~~shall~~must allow a defendant to withdraw a guilty plea ~~of guilty~~ upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentencinge. If a defendant is allowed to withdraw a plea after sentencinge, the court ~~shall~~must set aside the judgment and the plea.

Subd. 2. Before Sentence. In its discretion the court may ~~also~~ allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so., The court must give ~~giving~~ due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.

Subd. 3. Withdrawal of Guilty Plea Without Asserting Innocence. The defendant may move to withdraw a plea of guilty without an assertion of not guilty of the charge to which the plea was entered.

Rule 15.06 Plea Discussions and Agreements Not Admissible

If the defendant enters a plea of guilty ~~which~~that is not accepted or ~~which~~ is withdrawn, ~~neither the~~any plea discussions, ~~nor the~~ plea agreements, ~~nor~~and the plea are not admissible as ~~shall be received in~~ evidence against or in favor of the defendant in any criminal, civil, or administrative proceeding.

(e) defendant has given or offered cooperation, which has resulted or may result in the successful prosecution of other offenders engaged in serious criminal conduct;

(f) defendant by pleading has aided in avoiding delay in the disposition of other cases and has contributed to the efficient administration of criminal justice.

Rule 15.05 Plea Withdrawal

Subd. 1. To Correct Manifest Injustice. At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentencing. If a defendant is allowed to withdraw a plea after sentencing, the court must set aside the judgment and the plea.

Subd. 2. Before Sentence. In its discretion the court may allow the defendant to withdraw a plea at any time before sentence if it is fair and just to do so. The court must give due consideration to the reasons advanced by the defendant in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea.

Subd. 3. Withdrawal of Guilty Plea Without Asserting Innocence. The defendant may move to withdraw a plea of guilty without an assertion of not guilty of the charge to which the plea was entered.

Rule 15.06 Plea Discussions and Agreements Not Admissible

If the defendant enters a plea of guilty that is not accepted or is withdrawn, any plea discussions, plea agreements, and the plea are not admissible as evidence against or in favor of the defendant in any criminal, civil, or administrative proceeding.

Rule 15.07 Plea to Lesser Offenses	**Rule 15.07 Plea to Lesser Offenses**
With the prosecutor's consent ~~of the prosecuting attorney~~ and the court's approval ~~of the court~~, the defendant ~~shall~~may ~~be permitted to enter a~~ plead ~~of~~ guilty to a lesser included offense or to an offense of lesser degree. ~~Upon~~On the defendant's motion ~~of the defendant~~ and after hearing, ~~thereon~~ the court, without the prosecutor's consent, may accept a ~~plea of~~ guilty plea to a lesser included offense or to an offense of lesser degree, provided the court is satisfied ~~following hearing~~ that the ~~prosecution~~prosecutor cannot introduce sufficient evidence ~~sufficient~~ to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the indictment, complaint or tab charge. However, in felony cases, if the indictment or complaint is not amended, the reduction of the charge to an included offense or an offense of lesser degree ~~shall~~must be done in writing or on the record. ~~If and if~~ done only on the record, the proceedings ~~shall~~must be transcribed and filed.	With the prosecutor's consent and the court's approval, the defendant may plead guilty to a lesser included offense or to an offense of lesser degree. On the defendant's motion and after hearing, the court, without the prosecutor's consent, may accept a guilty plea to a lesser included offense or to an offense of lesser degree, provided the court is satisfied that the prosecutor cannot introduce sufficient evidence to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the indictment, complaint or tab charge. However, in felony cases, if the indictment or complaint is not amended, the reduction of the charge to an included offense or an offense of lesser degree must be done in writing or on the record. If done only on the record, the proceedings must be transcribed and filed.
Rule 15.08 Plea to Different Offense	**Rule 15.08 Plea to Different Offense**
With the consent of the ~~prosecuting attorney~~prosecutor and the defendant, the defendant may enter a ~~plea of~~ guilty plea to a different offense than that charged in the original tab charge, indictment, or complaint. If the different offense is a felony or gross misdemeanor, a new complaint ~~shall~~must be signed by the ~~prosecuting attorney~~prosecutor and filed in the district court. The complaint ~~shall~~must be in the form prescribed by Rules 2.01 and ~~Rule~~ 2.03 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged with the new offense by complaint or tab charge, as provided in Rule 4.02, subd. 5(3) ~~with the new offense~~, and the original charge ~~shall~~must be dismissed.	With the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original tab charge, indictment, or complaint. If the different offense is a felony or gross misdemeanor, a new complaint must be signed by the prosecutor and filed in the district court. The complaint must be in the form prescribed by Rules 2.01 and 2.03 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged with the new offense by complaint or tab charge, as provided in Rule 4.02, subd. 5(3), and the original charge must be dismissed.

Rule 15.09 Record of Proceedings	**Rule 15.09 Record of Proceedings**
~~Upon~~Whenever a guilty plea to an offense punishable by incarceration is entered and accepted by the court, ~~either~~ a verbatim record of the proceedings ~~shall~~must 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~~must be filed with the court. If a written petition to enter a ~~plea of~~ guilty plea is submitted to the court, it ~~shall~~must be in the ~~appropriate~~ form as set forth in the Appendices to this rule. ~~The defendant, prosecution, or any~~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.	Whenever a guilty plea to an offense punishable by incarceration is entered and accepted by the court, a verbatim record of the proceedings must be made, or in the case of misdemeanors, a petition to enter a plea of guilty must be filed with the court. If a written petition to enter a guilty plea is submitted to the court, it must be in the form as set forth in the Appendices to this rule. Any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule. When requested, the transcript must be completed within 30 days of the date the transcript was requested in writing and satisfactory financial arrangements were made for the transcription.
Rule 15.10 Guilty Plea to Offenses From Other Jurisdictions	**Rule 15.10 Guilty Plea to Offenses From Other Jurisdictions**
Subd. 1. Request to Enter Plea. Following a ~~plea of~~ guilty plea or a verdict or finding of guilty, the defendant may request permission to plead guilty to any other offense committed by the defendant within the jurisdiction of other courts in the state. The offense must be charged ~~by~~, and the plea must be approved, by the ~~prosecuting attorney~~prosecutor having authority to charge the offenses.	Subd. 1. Request to Enter Plea. Following a guilty plea or a verdict or finding of guilty, the defendant may request permission to plead guilty to any other offense committed by the defendant within the jurisdiction of other courts in the state. The offense must be charged, and the plea must be approved, by the prosecutor having authority to charge the offenses.
Subd. 2. Fine Disbursement. Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction ~~shall~~must be remitted by the court administrator~~clerk of the court~~ imposing the fine to the court administrator ~~clerk of the court which~~that originally had jurisdiction over the offense. The court administrator~~clerk of the court~~ of original jurisdiction ~~upon receiving the remittance shall~~must disburse the fine~~it~~ as required by law for similar fines.	Subd. 2. Fine Disbursement. Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction must be remitted by the court administrator imposing the fine to the court administrator that originally had jurisdiction over the offense. The court administrator of original jurisdiction must disburse the fine as required by law for similar fines.

Rule 15.11 Use of Guilty Plea Petitions When Defendant is Disabled~~Handicapped~~ in Communication~~s~~

Whenever~~In all cases in which~~ a defendant is disabled ~~handicapped~~ in communication ~~because of difficulty in speaking or comprehending the English language~~, the court ~~may~~must not accept a guilty plea petition unless the defendant is first able to review it with the assistance of a qualified interpreter and the court establishes on the record that this has occurred. Whenever practicable, the court should use multilingual guilty plea petitions approved by the State Court Administrator to insure that the defendant understands all rights being waived, the nature of the proceedings, and the petition.

Comment—Rule 15

~~*Rule 15.01 adopts in principle ABA Standards, Pleas of Guilty, 1.4-1.6 (Approved Draft, 1968) as to the advice which shall be given to and the inquiry that shall be made of a defendant before acceptance of a plea of guilty to provide assurance that the defendant understands the nature of the charge and the consequences of the plea, including the relinquishment of constitutional rights See (Boykin v. Alabama, 395 U.S. 238 (1969)); that the plea is voluntary; and that it has a factual basis. See also State v. Johnson, 279 Minn. 209, 156 N.W.2d 218 (1968).*~~

~~*Rule 15.01 differs from the ABA Standards and from F.R.Crim.P. 11 in that the Rule sets forth a detailed inquiry, following substantially that suggested in Jones, Minnesota Criminal Procedure, 3rd Edition, § 31, p. 80. (See also Preliminary Draft of Proposed Amendments to the F.R.Crim.P. 11 (1971), 52 F.R.D. 409, 415.)*~~ *Although a failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty, a complete inquiry as provided for by the rule will in most cases assure and provide a record for a valid plea.* ~~*Rule 15.01 also differs in its*~~ *The requirement that the court make certain that a defendant* ~~*handicapped*~~ *disabled in communication has a qualified interpreter*~~*. This*~~ *comports with Rule 8 of the Minnesota General Rules of Practice and the general requirement for interpreter services*

Rule 15.11 Use of Guilty Plea Petitions When Defendant is Disabled in Communication

Whenever a defendant is disabled in communication, the court must not accept a guilty plea petition unless the defendant is first able to review it with the assistance of a qualified interpreter and the court establishes on the record that this has occurred. Whenever practicable, the court should use multilingual guilty plea petitions approved by the State Court Administrator to insure that the defendant understands all rights being waived, the nature of the proceedings, and the petition.

Comment—Rule 15

Although a failure to include all of the interrogation set forth in Rule 15.01 will not in and of itself invalidate a plea of guilty, a complete inquiry as provided for by the rule will in most cases assure and provide a record for a valid plea. The requirement that the court make certain that a defendant disabled in communication has a qualified interpreter comports with Rule 8 of the Minnesota General Rules of Practice and the general requirement for interpreter services established in Rule 5.01 and Minn. Stat. §§ 611.31-611.34, and emphasizes the critical importance of this service in the guilty plea process.

The inquiry required by paragraph 6.l. of Rule 15.01, and by paragraph 3 of Rule 15.02 (concerning deportation and related consequences), is similar to that required in a number of other states. See, e.g., California, Cal. Penal Code § 1016.5; Connecticut, Conn. Gen. Stat. Ann. § 54-1 j; Massachusetts, Mass. Gen. Laws Ann. ch. 278, § 29D; New York, N.Y. Crim. Proc. Law § 220.50 (7); Ohio, Ohio Rev. Code Ann. § 2943.031; Oregon, Or. Rev. Stat. § 135.385(2)(d); Texas, Tex. Code Crim. Proc. Ann. art. 26.13(a)(4); and Washington, Wash. Rev. Code Ann. § 10.40.200(2). In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the Illegal Immigration Reform and Immigrant Responsibility

established in Rule 5.01 and Minn. Stat. §§ 611.31-611.34, ~~(1992)~~ and emphasizes the critical importance of this service in the guilty plea process.

The inquiry required by paragraph ~~10.c~~6.l. of Rule 15.01, and by paragraph ~~2~~ 3 of Rule 15.02 (concerning deportation and related consequences), is similar to that required in a number of other states. See, e.g., California, Cal. Penal Code § 1016.5; Connecticut, Conn. Gen. Stat. Ann. § 54-1 j; Massachusetts, Mass. Gen. Laws Ann. ch. 278, § 29D; New York, N.Y. Crim. Proc. Law § 220.50 (7); Ohio, Ohio Rev. Code Ann. § 2943.031; Oregon, Or. Rev. Stat. § 135.385(2)(d); Texas, Tex. Code Crim. Proc. Ann. art. 26.13(a)(4); and Washington, Wash. Rev. Code Ann. § 10.40.200(2). In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), Congress extensively amended the Immigration and Nationality Act and greatly expanded the grounds for deportation of non-citizens convicted of crimes. Consequently, ~~many~~ non-citizens pleading guilty ~~to felony charges and even to a number of non-felony charges~~ will subject themselves to deportation proceedings. The consequences of such proceedings will often be more severe and more important to the non-citizen defendant than the consequences of the criminal proceedings. It is therefore appropriate that defense counsel advise non-citizen defendants of those consequences and that the court inquire to be sure that has been done. As to the obligation of defense counsel in such situations, see ABA Standards for Criminal Justice, Pleas of Guilty, 14-3.2 (3~~2~~d ed. ~~1982~~1999). The requirement of inquiring into deportation and immigration consequences does not mean that other unanticipated non-criminal consequences of a guilty plea will justify later withdrawal of that plea. See Kim v. State, 434 N.W.2d 263 (Minn. 1989) (unanticipated employment consequences).

Before entry of a guilty plea, defense counsel should review with the defendant the effect of the Minnesota Sentencing Guidelines on the case. Further, it may be desirable for the court to order a pre-plea sentencing guidelines worksheet to be prepared so that the court, the defendant, and both counsel will be aware of the effect of the guidelines at the time the guilty plea is entered.

It is suggested by the Advisory Committee that the defendant sign a Petition to Plead Guilty in the form appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers in the petition, and that they are true.

The court in State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973), applied the Boykin standard to misdemeanors, holding that a

Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), Congress extensively amended the Immigration and Nationality Act and greatly expanded the grounds for deportation of non-citizens convicted of crimes. Consequently, non-citizens pleading guilty will subject themselves to deportation proceedings. The consequences of such proceedings will often be more severe and more important to the non-citizen defendant than the consequences of the criminal proceedings. It is therefore appropriate that defense counsel advise non-citizen defendants of those consequences and that the court inquire to be sure that has been done. As to the obligation of defense counsel in such situations, see ABA Standards for Criminal Justice, Pleas of Guilty, 14-3.2 (3d ed. 1999). The requirement of inquiring into deportation and immigration consequences does not mean that other unanticipated non-criminal consequences of a guilty plea will justify later withdrawal of that plea. See Kim v. State, 434 N.W.2d 263 (Minn. 1989) (unanticipated employment consequences).

Before entry of a guilty plea, defense counsel should review with the defendant the effect of the Minnesota Sentencing Guidelines on the case. Further, it may be desirable for the court to order a pre-plea sentencing guidelines worksheet to be prepared so that the court, the defendant, and both counsel will be aware of the effect of the guidelines at the time the guilty plea is entered.

It is suggested by the Advisory Committee that the defendant sign a Petition to Plead Guilty in the form appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers in the petition, and that they are true.

The court in State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973), applied the Boykin standard to misdemeanors, holding that a

prepared so that the court, the defendant, and both counsel will be aware of the effect of the guidelines at the time the guilty plea is entered.

~~*Rule 15.01 requires that the inquiry be made by the court with the assistance of the prosecuting attorney and defense counsel.*~~

It is suggested by the Advisory Committee that ~~*it is desirable to have*~~ *the defendant sign a Petition to Plead Guilty in the form* ~~*of the petition*~~ *appearing in the Appendices to these rules (which contain in even more detailed form the information showing the defendant's understanding of defense rights and the consequences of pleading), and that the defendant be asked upon the inquiry under Rule 15.01 to acknowledge signing the petition, that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them, that the defendant gave the answers* ~~*set forth*~~ *in the petition, and that they are true.* ~~*This petition is presently in use in some counties in Minnesota.*~~

~~*Such extensive questioning in a misdemeanor case, Rule 15.02, would not be possible considering the large number of such cases. Nevertheless, where a defendant is subjected to the possibility of a fine and 90 days incarceration, justice requires that the court inform the defendant at least of fundamental constitutional rights, the elements of the offense charged, and the possible consequences of a guilty plea.*~~ *The court in State v. Casarez, 295 Minn. 534, 203 N.W.2d 406 (1973), applied the Boykin standard to misdemeanors, holding that a misdemeanor guilty plea must be vacated where the record does not show a knowing and voluntary waiver of the defendant's constitutional rights. It is clear then that at least some limited inquiry is necessary on the record before a misdemeanor guilty plea is accepted, and Rule 15.02 prescribes the minimal standards for this questioning.*

~~*Care must be taken in accepting a misdemeanor guilty plea or the use of that conviction to aggravate a later misdemeanor to a gross misdemeanor may be endangered.*~~ *A prior* ~~*uncounseled*~~ *guilty plea without the assistance of misdemeanor guilty plea must be vacated where the record does not show a knowing and voluntary waiver of the defendant's constitutional rights. It is clear then that at least some limited inquiry is necessary on the record before a misdemeanor guilty plea is accepted, and Rule 15.02 prescribes the minimal standards for this questioning.*

A prior guilty plea without the assistance of defense counsel cannot be used to aggravate a later charge absent a valid waiver of counsel on the record for the earlier plea. State v. Nordstrom, 331 N.W.2d 901 (Minn. 1983). Also, a prior guilty plea which lacks a factual basis on the record cannot be used to aggravate a later charge. State v. Stewart, 360 N.W.2d 463 (Minn. Ct. App. 1985).

Under Rule 15.03, subd. 3, a "Misdemeanor Petition to Enter Plea of Guilty" as provided for in the Appendix B to Rule 15, may be completed and filed with the court. This petition in written form contains in substance the information and questions required by Rule 15.02, subd. 1, questions 2-5. When properly completed, the petition may be filed by either the defendant or defense counsel. It is not necessary for the defendant to personally appear in court when the petition is presented to the court. If the court is satisfied that the plea is being knowingly and voluntarily entered according to the standards of Rule 15.02, subd. 1 it will dispose of the plea in the same manner as if the defendant entered the plea in person.

See Minn. Stat. § 611A.03 regarding the prosecutor's duties under the Victim's Rights Act to make a reasonable and good faith effort to inform victims of proposed plea agreements and to notify of the right to be present at sentencing to make an objection to the plea agreement or to the proposed disposition.

When the defendant is questioned as to the plea agreement under Rule 15.01, the court must inform the defendant if the plea agreement is rejected, unless the court decides to postpone a decision on acceptance or rejection until the pre-sentence report is received. Whenever a plea agreement has been rejected, the defendant must be afforded the opportunity to withdraw a plea of

defense counsel cannot be used to aggravate a later charge absent a valid waiver of counsel on the record for the earlier plea. State v. Nordstrom, 331 N.W.2d 901 (Minn. 1983). Also, a prior guilty plea which lacks a factual basis on the record cannot be used to aggravate a later charge. State v. Stewart, 360 N.W.2d 463 (Minn. Ct. App. 1985). ~~*Careful use of the Misdemeanor Petition to Enter Plea of Guilty set forth in Appendix B should avoid these problems.*~~

~~*Under Rule 15.03, subd. 1, the inquiry upon entry of a guilty plea may be conducted by the court, defense counsel or the prosecutor as the court may direct. The questioning shall cover in substance the defendant's knowledge of the offense charged; the potential sentence; and the waiver of the defendant's rights to counsel, to a jury trial, to confront witnesses, to subpoena witnesses, to remain silent, to the presumption of innocence, and to require proof of guilt beyond a reasonable doubt. The court shall also ask the defendant whether the defendant understands the nature of the offense charged and whether the defendant believes that what the defendant did constitutes the offense to which the defendant is pleading guilty. The court shall determine whether there is a factual basis for the plea. Since even this minimal inquiry, if conducted for each defendant, would cause much delay and repetition, alternative methods are provided by Rule 15.03, subd. 2. Where a number of defendants are to be arraigned consecutively and are all present in the courtroom, Rule 15.03, subd. 1 provides that the court may advise them as a group of the possible consequences of a guilty plea and of their constitutional rights. The court must first determine whether any of the defendants are handicapped in communication, as that term is defined in Rule 5.01 and Minn. Stat. § 611.31 (1992). If any are, the court must provide a qualified interpreter for each such defendant and both the need for this service and the provision of it for each defendant who requires it must be noted on the record. Rule 5.01; Minn. Stat. §§ 611.31-611.34 (1992). The court must provide any such defendant with the information contained in the warning individually. If this procedure is followed, each defendant who has received a group warning, when appearing individually before the court must be asked whether the*~~ *guilty, if entered. Rules 15.04, subd. 3(1); 15.01. If the defendant has made factual disclosures tending to disclose guilt of the offense charged, the judge should disqualify himself or herself from the trial of the case.*

Rule 15.04, subd. 3(2)(d) includes situations in which certain witnesses, such as young children involved in sexual offenses, may be protected from unnecessary publicity.

Rule 15.05, subd. 1 authorizing the withdrawal of a guilty plea to correct manifest injustice does not provide guidelines for determining whether a motion for withdrawal of the plea is timely or whether withdrawal is necessary to correct manifest injustice. This is left by the rule to judicial decision. See, e.g., Chapman v. State, 282 Minn. 13, 162 N.W.2d 698 (1968).

Rule 15.06 is consistent with Rule 410 of the Minnesota Rules of Evidence, which also governs the admissibility of evidence of a withdrawn plea of guilty. Rule 410 is broader in that it makes inadmissible evidence relating to withdrawn pleas from other jurisdictions, including withdrawn pleas of nolo contendere from those jurisdictions that allow such a plea.

Before proceeding under Rule 15.10, the prosecutor in the jurisdiction having venue must charge the defendant. This may be done by complaint or indictment or, for misdemeanors, by tab charge. The charging document may be transmitted to the jurisdiction where the plea is to be entered by facsimile transmission under Rule 33.05.

It is strongly recommended that when the defendant is disabled in communication due to difficulty in speaking or comprehending English, a multilingual guilty plea petition be used that is in English as well as the language in which the defendant is able to communicate. The use of a multilingual petition would help assure that the translation is accurate and is preferable to the use of a petition that contains only the language other than English.

~~*defendant heard and understood the earlier statement by the court. The defendant must then be individually questioned as to waiver of the constitutional rights previously explained; as to understanding the nature of the offense charged; as to believing that what the defendant did constitutes the offense to which the defendant is pleading guilty; and as to the factual basis for the plea. To further save time, the statement of rights required by Rule 5.01 upon a defendant's first appearance in court may be combined with the questioning required by this rule.*~~

~~*Rule 15.03, subd. 2(2) provides the second alternative method of entering a plea of guilty.*~~ *Under ~~this rule~~Rule 15.03, subd. 3, a "Misdemeanor Petition to Enter Plea of Guilty" as provided for in the Appendix B to Rule 15, may be completed and filed with the court. This petition in written form contains in substance the information and questions required by Rule ~~15.03~~15.02, subd. 1, questions 2-5. When properly completed, the petition may be filed by either the defendant or defense counsel. ~~and it~~ It is not necessary for the defendant to personally appear in court when the petition is presented to the court. ~~(See Rule 15.03, subd. 2). See Mills v. Municipal Court, 110 Cal.Rptr. 329 (1973) where the California court approved the use of a similar petition.~~ If the court is satisfied that the plea is being knowingly and voluntarily entered according to the standards of Rule ~~15.01~~15.02, subd. 1 it will ~~shall~~ dispose of the ~~tendered~~ plea in the same manner as if the defendant ~~were~~ enter~~ed~~ing the plea ~~orally and~~ in person.*

~~*The defendant's right to counsel at the proceedings under Rule 15 is covered by Rule 13.03 (Arraignment In Felony and Gross Misdemeanor Cases).*~~

~~*Rule 15.01, parts 10, 11, 12, following ABA Standards, Pleas of Guilty, 1.5 (Approved Draft, 1968), requires the court to ascertain whether there has been a plea agreement, what it is, whether the defendant understands it and also understands that if the court disapproves the agreement, the defendant has the absolute right to withdraw the plea. Under Rule 15.04, subd. 3(1), the court shall advise the defendant if the plea agreement is rejected (unless the court decides to*~~

~~postpone approval or rejection until the pre-sentence report is received), and shall give the defendant an opportunity to withdraw the plea, if one has been entered.~~

~~Rule 15.04, subd. 1 regarding the propriety of plea discussions and agreements follows the language of ABA Standards, Pleas of Guilty, 3. 1(a) (Approved Draft, 1968). Instead of specifying what the subject matter of a plea agreement shall be (See ABA Standards, Pleas of Guilty, 3. 1(b) (Approved Draft, 1968)) Rule 15.04, subd. 1 refers to the more general considerations which under Rule 15.04, subd. 3(2) shall govern the prosecuting attorney in determining whether to enter into a plea agreement.~~ *See Minn. Stat. § 611A.03 regarding the prosecutor's duties under the Victim's Rights Act to make a reasonable and good faith effort to inform victims of proposed plea agreements and to notify of the right to be present at sentencing to make any objection to the plea agreement or to the proposed disposition.*

~~Rule 15.04, subd. 2, which refers to the relationship between defense counsel and the defendant in connection with a plea agreement, follows ABA Standards, Pleas of Guilty, 3. 2(a) (Approved Draft, 1968)~~.

*~~Rule 15.04, subd. 3(1) is adapted from ABA Standards, Pleas of Guilty, 3. 3(b) (Approved Draft, 1968) and authorizes the trial court to permit disclosure of a plea agreement in advance of the tender of the plea of guilty.~~ When the defendant is questioned as to the plea agreement under Rule 15.01, the court ~~shall~~ must inform the defendant if the plea agreement is rejected, unless the court decides to postpone a decision on acceptance or rejection until the pre-sentence report is received~~, and shall give the defendant an opportunity to withdraw a plea of guilty, if entered~~. ~~Whenever the court rejects the plea agreement, whether on tender of plea or after receipt of the pre-sentence report, or after plea, the court shall so inform the defendant and give the defendant an opportunity to affirm or withdraw the plea, if entered, and if~~ Whenever a plea agreement has been rejected, the defendant must be afforded the opportunity to withdraw a plea of guilty, if entered. Rules 15.04, subd. 3(1); 15.01. If the defendant has made factual

disclosures tending to disclose guilt of the offense charged, the judge should disqualify himself or herself from the trial of the case.

~~*Rule 15.04, subd. 3(2) sets forth the considerations that shall guide the prosecuting attorney in determining whether to enter into a plea agreement and what the plea agreement shall be, and it also contains the considerations that shall govern the court in deciding whether to accept the agreement. This rule is taken from ABA Standards, Pleas of Guilty, 1.8 (Approved Draft, 1968).*~~ *Rule 15.04, subd. 3(2)(d)* ~~*is intended to cover the*~~*includes situations in which certain* ~~*innocent*~~ *witnesses* ~~*or victims*~~*, such as young children involved in sexual offenses, may be protected from unnecessary publicity.*

Rule 15.05, subd. 1 authorizing the withdrawal of a guilty plea ~~*of guilty*~~ *to correct manifest injustice* ~~*follows the principles set by ABA Standards, Pleas of Guilty, 2. 1(a) (Approved Draft, 1968), but*~~ *does not provide guidelines for determining whether a motion for withdrawal of the plea is timely or whether withdrawal is necessary to correct manifest injustice.* ~~*(In this respect the rule differs from ABA Standards, Pleas of Guilty, 2. 1(a)(i), (ii) (Approved Draft, 1968).*~~ *This is left by the rule to judicial decision.* ~~*(*~~*See, e.g., Chapman v. State, 282 Minn. 13, 162 N.W.2d 698 (1968).*~~*)*~~

~~*Whenever a plea agreement has been rejected, the defendant shall be afforded the opportunity to withdraw a plea of guilty, if entered (Rules 15.04, subd. 3(1); 15.01).*~~

~~*The court shall permit withdrawal of a plea of guilty to correct manifest injustice whether the motion is made before or after sentence. (Rule 15.05, subd. 1).*~~

~~*Rule 15.05, subd. 2 permits the court in its discretion to allow the defendant to withdraw a guilty plea before sentence under the conditions specified in the rule. (Compare Minn. Stat. § 630.29 (1971) which does not prescribe guidelines.)*~~

~~*Rule 15.05, subd. 3 permitting a motion to*~~

~~*withdraw a plea of guilty without asserting innocence is taken from ABA Standards, Pleas of Guilty, 2.* *1(a)(iii)* *(Approved Draft, 1968).*~~

~~*Rule 15.06 making plea discussions and plea agreements inadmissible in evidence follows ABA Standards, Pleas of Guilty, 3.4* *(Approved Draft, 1968).*~~ *Rule 15.06 is consistent with Rule 410 of the Minnesota Rules of Evidence, which also governs the admissibility of evidence of a withdrawn plea of guilty. Rule 410 is broader in that it makes inadmissible evidence relating to withdrawn pleas from other jurisdictions, including withdrawn pleas of nolo contendere from those jurisdictions* ~~*which*~~*that allow such a plea.*

~~*Rule 15.07 permits a defendant to plead to a lesser offense with the approval of the court if the prosecuting attorney consents. (This is substantially the same as Minn. Stat. § 630.30 (1971) which requires the approval of the court.)*~~

~~*The rule also authorizes the court on defendant's motion and following a hearing thereon to permit the defendant to plead to a lesser offense without the consent of the prosecuting attorney. In accordance with State v. Carriere, 290 N.W.2d* *618 (Minn.1980), such a plea is permitted only if the court is satisfied, following a hearing, that the prosecution could not present sufficient admissible evidence to justify submission of the offense charged to the jury. Under State v. Carriere, supra, the showing required of the prosecution in order to withstand the defendant's motion would be in the nature of an offer of proof. Further, the hearing must be in open court and the court's order must include a detailed statement of the reasons for its ruling on the motion. Rule 15.07 also permits a plea to a lesser offense over the prosecutor's objection to prevent a manifest injustice. Rule 15.07 does not require that the indictment or complaint be amended.* *(See State v. Oksanen, 276 Minn. 103, 149 N.W.2d* *27 (1967).) However, if the indictment or complaint is not amended the rule requires that for felonies the reduction of the charge must be done in writing or on the record. If it is done only on record the proceedings must be transcribed and filed to assure that the court file will always reflect the disposition of all felony*~~

charges.

Rule 15.08 permits a plea of guilty to a different offense than that charged in the original complaint, tab charge or indictment with the consent of the defendant and prosecuting attorney. In that event for felonies and gross misdemeanors, other than those under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, a new complaint shall be filed, but need not be made on oath and need not provide evidence establishing probable cause. (See also Rule 11.06). In misdemeanor cases and gross misdemeanor cases under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the procedure is also permitted, but the defendant will be tab charged with the new offense as provided by Rule 4.02, subd. 5(3), and the original charge or charges will be dismissed upon entry of the guilty plea to the new charge.

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, 89 S.Ct. 1709, 395 U.S. 238, 23 L.Ed.2d 274 (1969); and Mills v. Municipal Court, 110 Cal.Rptr. 329, 515 P.2d 273, 10 Cal.3d 288 (1973). The verbatim record may be made by a court reporter or recording equipment (see Minnesota Statutes, section 487.11, subd. 2 (1971)). The verbatim record need not be transcribed unless requested by the defendant, 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.

Rule 15.10, which permits a defendant to plead guilty to misdemeanor, gross misdemeanor, or felony offenses from other jurisdictions in certain circumstances, is based on Unif.R.Crim.P.

~~*444(e) (1987). It is similar to Rule 5.04, subd. 2, which previously authorized such pleas in misdemeanor cases, but is broader in that such pleas are permitted after a verdict or finding of guilty as well as after a guilty plea.*~~ *Before proceeding under ~~this rule~~Rule 15.10, ~~it is necessary for~~ the ~~prosecuting attorney~~prosecutor having authority to charge the offense to charge the defendant ~~to~~ in the jurisdiction having venue must charge the defendant. This may be done by complaint or indictment or, for misdemeanors, by tab charge. The charging document may be transmitted to the jurisdiction where the plea is to be entered by facsimile transmission under Rule 33.05.~~g~~* ~~*If the defendant is handicapped in communication due to difficulty in speaking or comprehending English, the court may not accept a guilty plea petition until the defendant has been able to review it with the assistance of a qualified interpreter, and the court establishes on the record that this has occurred. See Final Report of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Chapter 2, recommendation 11.*~~ *It is strongly recommended that when the defendant is ~~handicapped~~disabled in communication due to difficulty in speaking or comprehending English, a multilingual guilty plea petition be used ~~which~~that ~~would be both~~is in English ~~and~~ as well as a language in which the defendant is able to communicate. The use of a multilingual petition would help assure that the translation is accurate and is preferable to the use of a petition ~~which~~that contains only the language other than English.*	

Proposed Revisions to Minn. R. Crim. P. 16

Original Language Showing Markup	Proposed Revised Language
Rule 16. Misdemeanor Prosecution by Indictment In misdemeanor cases prosecuted by indictment, Rule 19 (Warrant or Summons Upon Indictment) governs to the extent that ~~Rule 19~~it conflicts with~~ other rules, Rule 19 shall govern~~ those rules that would otherwise govern the misdemeanor prosecution. **Comment—Rule 16** ~~*The grand jury, with its power under Minn. Stat. § 628.02 to inquire into all "public offenses", could indict a defendant on misdemeanor charges. In those rare cases, Rule 16 provides that the prosecution shall be governed by Rule 19 in those instances where Rule 19 conflicts with those rules that would otherwise govern the misdemeanor prosecution.*~~	**Rule 16. Misdemeanor Prosecution by Indictment** In misdemeanor cases prosecuted by indictment, Rule 19 (Warrant or Summons Upon Indictment) governs to the extent that it conflicts with those rules that would otherwise govern the misdemeanor prosecution.

Proposed Revisions to Minn. R. Crim. P. 17

Original Language Showing Markup	Proposed Revised Language
Rule 17. Indictment, Complaint and Tab Charge	**Rule 17. Indictment, Complaint and Tab Charge**
Rule 17.01 Prosecution by Indictment, Complaint or Tab Charge	**Rule 17.01 Prosecution by Indictment, Complaint or Tab Charge**
Subd. 1 An offense punishable~~which may be punished~~ by life imprisonment ~~shall~~must be prosecuted by indictment.~~,~~ ~~but t~~The prosecut~~or~~ion may initially proceed by a complaint ~~following~~ after an arrest without a warrant or as the basis to issue ~~for the issuance of~~ an arrest warrant ~~of arrest~~. ~~The~~Subsequent procedure ~~thereafter shall~~must be in accordance with ~~the provisions of~~ Rules 8 and 19. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided by Rule 2.	Subd. 1. An offense punishable by life imprisonment must be prosecuted by indictment. The prosecutor may initially proceed by a complaint after an arrest without a warrant or as the basis to issue an arrest warrant. Subsequent procedure must be in accordance with Rules 8 and 19. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided by Rule 2.
Subd. 2 Misdemeanors and designated gross misdemeanors as defined by Rule 1.04(a)-(b) may be prosecuted by tab charge~~,~~. ~~provided that for any such designated gross misdemeanors, a~~A complaint ~~shall~~must be subsequently ~~made,~~ served and filed for designated gross misdemeanors as required by Rule 4.02, subd. 5(3).	Subd. 2. Misdemeanors and designated gross misdemeanors as defined by Rule 1.04(a)-(b) may be prosecuted by tab charge. A complaint must be subsequently served and filed for designated gross misdemeanors as required by Rule 4.02, subd. 5(3).
Subd. 3 The arrest of a person by~~under a~~ arrest warrant ~~of arrest~~issued ~~upon~~ in a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5(2) against a person arrested without a warrant ~~shall~~will not preclude an indictment for the offense charged ~~in the complaint~~or for an offense arising out of the same conduct~~from the conduct upon which the charge in the complaint was based~~.	Subd. 3 The arrest of a person by arrest warrant issued in a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5(2) against a person arrested without a warrant will not preclude an indictment for the offense charged or for an offense arising out of the same conduct.
Rule 17.02 Nature and Contents	**Rule 17.02 Nature and Contents**
Subd. 1. Complaint. A complaint must be substantially in the form ~~prescribed~~required by Rule 2.	Subd. 1. Complaint. A complaint must be substantially in the form required by Rule 2.
Subd. 2. Indictment. An indictment must contain a written statement of the essential facts constituting the offense charged~~. It must~~and be signed by the grand jury foreperson ~~of the grand jury~~.	Subd. 2. Indictment. An indictment must contain a written statement of the essential facts constituting the offense charged and be signed by the grand jury foreperson.

Subd. 3. Indictment and Complaint. For each count, the~~The~~ indictment or complaint must ~~state for each count the citation of~~ cite the statute, rule, regulation, or other provision of law the defendant ~~is~~ allegedly ~~to have~~ violated. Error in the citation or its omission ~~must~~is not ~~be~~a ground to dismiss or reverse a conviction ~~for dismissal or for reversal of a conviction~~ if the error or omission did not prejudice the defendant. Each count can charge only one offense. Allegations made in one count may be incorporated by reference in another count. An indictment or complaint may~~, but need not,~~ contain counts for the different degrees of the same offense,~~ or for any of such degrees,~~ or counts for lesser or other included offenses~~, or for any of such offenses~~. The same indictment or complaint may contain counts for murder~~,~~ and ~~also for~~ manslaughter~~, or different degrees of manslaughter~~. ~~When the offense may have been committed by the use of different means, the~~The indictment or complaint may allege in one count ~~the~~ alternative theories ~~means~~ of committing the offense ~~in the alternative~~ or that the means by which the defendant committed the offense are unknown.

Subd. 3. Indictment and Complaint. For each count, the indictment or complaint must cite the statute, rule, regulation, or other provision of law the defendant allegedly violated. Error in the citation or its omission is not a ground to dismiss or reverse a conviction if the error or omission did not prejudice the defendant. Each count can charge only one offense. Allegations made in one count may be incorporated by reference in another count. An indictment or complaint may contain counts for the different degrees of the same offense, or counts for lesser or other included offenses. The same indictment or complaint may contain counts for murder and manslaughter. The indictment or complaint may allege in one count alternative theories of committing the offense or that the means by which the defendant committed the offense are unknown.

Subd. 4. Administrative Information. The indictment or complaint must ~~also~~ contain other administrative information as authorized and published by the State Court Administrator.

Subd. 4. Administrative Information. The indictment or complaint must contain other administrative information as authorized and published by the State Court Administrator.

~~Subd. 5. Bill of Particulars. The bill of particulars is abolished.~~

Rule 17.03 Joinder of Offenses and of Defendants

Subd. 1. Joinder of Offenses. When the defendant's conduct constitutes more than one offense, each ~~such~~ offense may be charged in the same indictment or complaint in a separate count.

Rule 17.03 Joinder of Offenses and of Defendants

Subd. 1. Joinder of Offenses. When the defendant's conduct constitutes more than one offense, each offense may be charged in the same indictment or complaint in a separate count.

Subd. 2. Joinder of Defendants.

~~(1) Felony and Gross Misdemeanor Cases.~~ When two or more defendants are ~~jointly~~ charged with the same offense~~a felony~~, they may be tried separately or jointly ~~in~~ at the ~~discretion of the court~~court's discretion. ~~In~~ To determine whether ~~making its determination on whether~~ to order

Subd. 2. Joinder of Defendants. When two or more defendants are charged with the same offense, they may be tried separately or jointly at the court's discretion. To determine whether to order joinder or separate trials, the court must consider:

- the nature of the offense charged;

joinder or separate trials, the court ~~shall~~must consider: • ~~-~~the nature of the offense charged;~~,~~ • the impact on the victim;~~:~~, • the potential prejudice to the defendant;~~,~~ and~~;~~ • the interests of justice. ~~In cases other than felonies, defendants jointly charged may be tried jointly or separately, in the discretion of the court.~~ In all cases any one or more of the~~said~~ defendants may be convicted or acquitted. ~~(2) Misdemeanor Cases. Defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases, any one or more of said defendants may be convicted or acquitted.~~	• the impact on the victim; • the potential prejudice to the defendant; and • the interests of justice. In all cases any one or more of the defendants may be convicted or acquitted.
Subd. 3. Severance of Offenses or Defendants. ~~Misjoinder of offenses or charges or defendants shall not be grounds for dismissal, but on motion, offenses or defendants improperly joined shall be severed for trial.~~	Subd. 3. Severance of Offenses or Defendants.
(1) Severance of Offenses. On motion of the ~~prosecuting attorney~~prosecutor or the defendant, the court ~~shall~~must sever offenses or charges if: (a) the offenses or charges are not related; (b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge; or (c) during trial, with the defendant's consent or ~~up~~on a finding of manifest necessity, the court determines severance is necessary to fairly determine ~~achieve a fair determination of~~ the defendant's guilt or innocence of each offense or charge~~crime~~.	(1) Severance of Offenses. On motion of the prosecutor or the defendant, the court must sever offenses or charges if: (a) the offenses or charges are not related; (b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge; or (c) during trial, with the defendant's consent or on a finding of manifest necessity, the court determines severance is necessary to fairly determine the defendant's guilt or innocence of each offense or charge.
(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On a defendant's motion ~~of a defendant~~ for severance from a codefendant because a codefendant's out-of-court statement refers to~~,~~ but is not admissible against~~,~~ the defendant, the court must~~shall~~ determine whether the ~~prosecuting attorney~~prosecutor intends to offer the statement as evidence ~~as part of~~during its case in chief. If so, the court must~~shall~~ require the ~~prosecuting attorney~~prosecutor to elect one of the following options:	(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On a defendant's motion for severance from a codefendant because a codefendant's out-of-court statement refers to but is not admissible against the defendant, the court must determine whether the prosecutor intends to offer the statement as evidence during its case in chief. If so, the court must require the prosecutor to elect one of the following options:

(a) a joint trial at which the statement is not received in evidence; (b) a joint trial at which the statement is only received in evidence ~~only~~ after all references to the defendant have been deleted, if the statement's admission ~~of the statement~~ with the deletions will not prejudice the defendant; or (c) the defendant's severance~~ of the defendant~~.	(a) a joint trial at which the statement is not received in evidence; (b) a joint trial at which the statement is only received in evidence after all references to the defendant have been deleted, if the statement's admission with the deletions will not prejudice the defendant; or (c) the defendant's severance.
(3) Severance of Defendants During Trial. The court must~~shall~~ sever defendants during trial, with the defendant's consent or ~~up~~on a finding of manifest necessity, if the court determines severance is necessary to ~~achieve a~~ fairly ~~determination of~~determine the guilt or innocence of one or more of the defendants.	(3) Severance of Defendants During Trial. The court must sever defendants during trial, with the defendant's consent or on a finding of manifest necessity, if the court determines severance is necessary to fairly determine the guilt or innocence of one or more of the defendants.
Subd. 4. Consolidation of Indictments, Complaints or Tab Charges for Trial. (a) The court, on the prosecutor's motion~~ of the prosecution~~, or on its initiative, may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together if the offenses and the defendants~~, if there is more than one,~~ could have been joined in a single indictment, complaint, or tab charge. (b) On a defendant's motion~~ of the defendant~~, the court may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together even if the offenses and the defendants~~, if there be more than one,~~ could not have been joined in a single indictment, complaint, or tab charge. (c) In all cases, the~~The~~ procedure will~~shall~~ be the same as if the prosecution were under ~~such~~a single indictment, complaint, or tab charge.	Subd. 4. Consolidation of Indictments, Complaints or Tab Charges for Trial. (a) The court, on the prosecutor's motion, or on its initiative, may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together if the offenses and the defendants could have been joined in a single indictment, complaint, or tab charge. (b) On a defendant's motion, the court may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together even if the offenses and the defendants could not have been joined in a single indictment, complaint, or tab charge. (c) In all cases, the procedure will be the same as if the prosecution were under a single indictment, complaint, or tab charge.
Subd. 5. Dual Representation. When ~~two~~2 or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and ~~two~~2 or more of them are represented by the same ~~counsel~~attorney, the following procedure ~~hereafter outlined shall~~must be followed before plea and trial.	Subd. 5. Dual Representation. When 2 or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and 2 or more of them are represented by the same attorney, the following procedure must be followed before plea and trial.
(1) The court ~~shall~~must: (a) address each defendant personally on the record~~;~~; (b) advise each ~~the~~ defendant of the potential danger of dual representation~~;~~; and (c) give each ~~the~~ defendant an opportunity to	(1) The court must: (a) address each defendant personally on the record; (b) advise each defendant of the potential danger of dual representation; and (c) give each defendant an opportunity to

question the court on the complexitiesnature and possible consequences of dual representation.

(2) The court mustshall elicit from each defendant in a narrative statement that the defendant:

(a) defendant has been advised of the right to effective representation;

(b) that the defendant understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;

(c) that the defendant has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and

(d) that the defendant voluntarily waives the Sixth Amendment protectionsconstitutional right to separate counsel.

Rule 17.04 Surplusage

The court on motion may strike surplusage from the indictment, complaint, or tab charge.

Rule 17.05 Amendment of Indictment or Complaint

The court may permit an indictment or complaint to be amended at any time before verdict or finding if no additional or different offense is charged and if the defendant's substantial rights of the defendant are not prejudiced.

Rule 17.06 Motions Attacking Indictment, Complaint or Tab Charge

Subd. 1. Defects in Form. No indictment, complaint, or tab charge willshall be dismissed nor shallwill the trial, judgment, or other proceedings thereon be affected by reason of a defect or imperfection in matters of form whichthat does not tend to prejudice the defendant's substantial rights of the defendant.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to an indictment, complaint, or tab charge mustshall be made by motion as provided byunder Rule 10.01, subd. 2 and may be based on the following grounds without limitation:

(1) Indictment.

question the court on the complexities and possible consequences of dual representation.

(2) The court must elicit from each defendant in a narrative statement that the defendant:

(a) has been advised of the right to effective representation;

(b) understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;

(c) has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and

(d) voluntarily waives the constitutional right to separate counsel.

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Rule 17.06 Motions Attacking Indictment, Complaint or Tab Charge

Subd. 1. Defects in Form. No indictment, complaint, or tab charge will be dismissed nor will the trial, judgment, or other proceedings be affected by reason of a defect or imperfection in matters of form that does not prejudice the defendant's substantial rights.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to an indictment, complaint, or tab charge must be made by motion under Rule 10.01, subd. 2 and may be based on the following grounds without limit:

(1) Indictment.

(a) The evidence admissible before the grand jury was not sufficient~~as required by these rules~~ to establish ~~the~~an offense charged or any lesser or other included offense~~ or any offense of a lesser degree~~;	(a) The evidence admissible before the grand jury was not sufficient to establish an offense charged or any lesser or other included offense;
(b) The grand jury was illegally constituted;	(b) The grand jury was illegally constituted;
(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;	(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;
(d) Fewer than 12 grand jurors concurred in the finding of the indictment;	(d) Fewer than 12 grand jurors concurred in the finding of the indictment;
(e) The indictment was not found or returned as required by law; or	(e) The indictment was not found or returned as required by law; or
(f) An unauthorized person was in the grand jury room during the presentation of evidence ~~up~~on the charge contained in the indictment, or during the grand jury's deliberations or voting~~ of the grand juryupon the charge~~.	(f) An unauthorized person was in the grand jury room during the presentation of evidence on the charge contained in the indictment, or during the grand jury's deliberations or voting.
(2) Indictment, Complaint, or Tab Charge. ~~In the case of an indictment, complaint or tab charge:~~	(2) Indictment, Complaint, or Tab Charge.
(a) The indictment, complaint or tab charge does not substantially comply with the requirements prescribed by law to the prejudice of the defendant's substantial rights~~ of the defendant~~;	(a) The indictment, complaint or tab charge does not substantially comply with the requirements prescribed by law to the prejudice of the defendant's substantial rights;
(b) The court lacks jurisdiction ~~of~~over the offense charged;	(b) The court lacks jurisdiction over the offense charged;
(c) The law defining the offense charged is unconstitutional or otherwise invalid;	(c) The law defining the offense charged is unconstitutional or otherwise invalid;
(d) In the case of an indictment or complaint, ~~that~~ the facts stated do not constitute an offense;	(d) In the case of an indictment or complaint, the facts stated do not constitute an offense;
(e) The prosecution is barred by the statute of limitations;	(e) The prosecution is barred by the statute of limitations;
(f) The defendant has been denied a speedy trial;	(f) The defendant has been denied a speedy trial;
(g) There exists some other jurisdictional or legal impediment to the defendant's prosecution or conviction ~~of the defendant~~ for the offense charged, ~~except as~~unless provided by Rule 10.02; or	(g) There exists some other jurisdictional or legal impediment to the defendant's prosecution or conviction for the offense charged, unless provided by Rule 10.02; or
(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat. § 609.035.	(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat. § 609.035.
Subd. 3. Time for Motion. A motion to dismiss the indictment, complaint, or tab charge must~~shall~~ be made within the time prescribed by Rule ~~10.04~~10.03, subd. 1. ~~except that~~ At any time during the pendency of a proceeding an objection may be made to the court's jurisdiction ~~of the~~	Subd. 3. Time for Motion. A motion to dismiss the indictment, complaint, or tab charge must be made within the time prescribed by Rule 10.03, subd. 1. At any time during the pendency of a proceeding an objection may be made to the court's jurisdiction over the offense or that the

~~court~~ over the offense or that the indictment, complaint or tab charge fails to charge an offense ~~may be made at any time during the pendency of the proceeding~~.

Subd. 4. Effect of ~~Determination of~~Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the indictment, complaint, or tab charge~~ is determined adversely to the defendant~~, the defendant must~~shall~~ be permitted to plead if the defendant has not previously entered a plea~~pleaded~~. A plea previously entered ~~shall~~will stand. ~~The defendant in a~~In all ~~misdemeanor~~cases, the defendant may continue to raise the issues on appeal if convicted ~~following~~ after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss an indictment, complaint or tab charge ~~is granted~~ for a defect in the institution of prosecution or in the indictment, complaint, or tab charge, the court must~~shall~~ specify the grounds on~~upon~~ which the motion is granted.

(3) Dismissal for Curable Defect. If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3), or for a defect that could be cured or avoided by an amended or new indictment~~,~~ or complaint, further prosecution for the same offense will~~shall~~ not be barred.~~, and the court shall on~~ On the prosecutor's motion ~~of the prosecuting attorney,~~ made within ~~seven (~~7~~)~~ days after notice ~~of the entry~~ of the order granting the motion to dismiss, the court must order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that ~~might~~may be required under Rule 6.02, subd. 1, ~~then~~ the defendant must be released subject to such non-monetary conditions as the court deems appropriate~~ under that rule~~. The specified time for such amended or new indictment or complaint must~~shall~~ not exceed ~~sixty (~~60~~)~~ days for filing a new indictment or 7~~seven (7)~~ days for amending an indictment or complaint or for filing a new complaint. During the 7~~seven~~-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or complaint or tab charge fails to charge an offense.

Subd. 4. Effect of Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the indictment, complaint, or tab charge, the defendant must be permitted to plead if the defendant has not previously entered a plea. A plea previously entered will stand. In all cases, the defendant may continue to raise the issues on appeal if convicted after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss an indictment, complaint or tab charge for a defect in the institution of prosecution or in the indictment, complaint, or tab charge, the court must specify the grounds on which the motion is granted.

(3) Dismissal for Curable Defect. If the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3), or for a defect that could be cured or avoided by an amended or new indictment or complaint, further prosecution for the same offense will not be barred. On the prosecutor's motion made within 7 days after notice of the order granting the motion to dismiss, the court must order that defendant's bail or the other conditions of his release be continued or modified for a specified reasonable time pending an amended or new indictment or complaint.

In misdemeanor cases, if the defendant is unable to post any bail that may be required under Rule 6.02, subd. 1, the defendant must be released subject to such non-monetary conditions as the court deems appropriate. The specified time for such amended or new indictment or complaint must not exceed 60 days for filing a new indictment or 7 days for amending an indictment or complaint or for filing a new complaint. During the 7-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or

during the time specified by the order, if such motion is made, ~~dismissal of~~ the indictment or complaint's dismissal must~~shall~~ be stayed. If the prosecutor~~ion~~ does not make the motion within the ~~seven~~ 7-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified ~~by the order~~, the defendant must~~shall~~ be discharged and further prosecution for the same offense is~~shall be~~ barred unless the prosecutor~~ion~~ has appealed as provided by law, or ~~unless~~the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor~~cases~~ and ~~also in~~ designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will~~shall~~ not be barred unless ~~additionally a judge or judicial officer of~~ the court has so ordered.

Comment—Rule 17

~~*The first sentence of Rule 17.01 that an offense punishable by life imprisonment shall be prosecuted by indictment retains existing Minnesota law, which does not permit an information to be filed for that offense. (Minn. Stat. §§ 628.29, 628.32(6) (1971).) All other offenses may be prosecuted by indictment or complaint. The complaint takes the place of the information as an accusatory instrument. (See comment, Rules 2, 8.)*~~

~~*Under Rule 17.01 the fact that a complaint has been filed initially does not preclude an indictment while the complaint is pending or after it has been dismissed (except as provided in Rule 17.06, subd. 4).*~~

~~*Under Rule 17.01, a misdemeanor and also a designated gross misdemeanor as defined in Rule 1. 04(b) may be prosecuted by complaint or by tab charge (See Rule 4.02, subd. 5(3)) under these rules. However, for any such designated gross misdemeanor prosecution the complaint must be subsequently made, served and filed within the time limits as provided by Rule 4.02, subd. 5(3). These offenses may also be*~~

complaint's dismissal must be stayed. If the prosecutor does not make the motion within the 7-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified, the defendant must be discharged and further prosecution for the same offense is barred unless the prosecutor has appealed as provided by law, or the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor and designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will not be barred unless the court has so ordered.

Comment—Rule 17

The complaint under Rule 2.01 and the indictment under Rule 17.02, subd. 2 must contain a written statement of the essential facts constituting the offense charged. The statement of the evidence, supporting affidavits, or sworn testimony, showing probable cause required by Rule 2.01 are not a part of the indictment.

The required legal content of the complaint and indictment is set forth in Minn. R. Crim. P. 2.01, 2.02, and 17.02, and serves the function of informing the court of the offense(s) charged and the facts establishing probable cause. In addition to this legal information, the court requires administrative information to identify the defendant and the case, as well as additional factual information about the defendant or the status of the defendant's case to fulfill the court's statutory obligations to provide such information to other agencies. There is no requirement that the complaint or indictment be submitted to the court in any particular form or format. Rule 17.02, subd. 4 requires the State Court Administrator to identify and publish the administrative content of the complaint or indictment required by the courts. A sample

~~prosecuted by indictment and, in such cases, rules applicable to indictments shall apply~~.

The complaint ~~by~~under Rule 2.01 and the indictment ~~by~~under Rule 17.02, subd. 2 must~~shall~~ contain a written statement of the essential facts constituting the offense charged. ~~(See F.R.Crim.P. 3, 7(c)(1).)~~ The statement of the evidence, ~~or the~~ supporting affidavits, or sworn testimony, showing probable cause required by Rule 2.01 are not a part of the indictment.

The required legal content of the complaint and indictment is set forth in Minn. R. Crim. P. 2.01, 2.02, and 17.02, and serves the function of informing the court of the offense(s) charged and the facts establishing probable cause. In addition to this legal information, the court requires administrative information to identify the defendant and the case, as well as additional factual information about the defendant or the status of the defendant's case to fulfill the court's statutory obligations to provide such information to other agencies. There is no requirement that the complaint or indictment be submitted to the court in any particular form or format. Rule 17.02, subd. 4 requires the State Court Administrator to identify and publish the administrative content of the complaint or indictment required by the courts. A sample complaint/indictment and a listing of the administrative content approved by the State Court Administrator will be published on the Minnesota Judicial Branch website. This flexibility will allow for e-filing of the complaint or indictment.

Except to the extent that existing statutes (Minn. Stat. §§ 628.10, 628.12- 628.13, 628.15- 628.18, 628.20- 628.24, 628.27 *~~(1971)~~), ~~governing~~ that govern the contents of an indictment or information are inconsistent with Rule 17.02, they are not ~~intended to be~~ abrogated by these rules. So, to the extent they are consistent with the provisions of Rule 17.02, they may be followed in drawing complaints and indictments under these rules.*

~~The requirement of Rule 17.02, subd. 3 for the citation of the statute violated but that error in~~ complaint/indictment and a listing of the administrative content approved by the State Court Administrator will be published on the Minnesota Judicial Branch website. This flexibility will allow for e-filing of the complaint or indictment.

Except to the extent that existing statutes (Minn. Stat. §§ 628.10, 628.12- 628.13, 628.15- 628.18, 628.20- 628.24, 628.27) that govern the contents of an indictment or information are inconsistent with Rule 17.02, they are not abrogated by these rules. So, to the extent they are consistent with the provisions of Rule 17.02, they may be followed in drawing complaints and indictments under these rules.

Rule 17.02, subd. 3 permits counts to be used but prohibits duplication by charging more than one offense in a single count.

Rule 17.03, subd. 5 sets forth procedures for representing two or more defendants who are jointly charged or tried, as set forth in State v. Olsen, 258 N.W.2d 898 (Minn. 1977). That case requires defendants to clearly and unequivocally waive their constitutional right to separate counsel. If a record is not made as required or if the record fails to show that the procedures were followed in every important respect, State v. Olsen, supra, places the burden on the prosecutor to establish beyond a reasonable doubt that a prejudicial conflict of interest did not exist.

Rule 17.05 leaves district courts to determine whether the defendant will be substantially prejudiced by an amendment and what steps, if any, including a continuance, may be taken to remove any prejudice that might otherwise result from an amendment. Rule 17.05 does not govern a complaint's amendment after a mistrial and before the start of the second trial. Rather, Rule 3.04, subd. 2, which provides for the free amendment of the complaint, controls. State v. Alexander, 290 N.W.2d 745 (Minn. 1980).

Grounds for a motion for dismissal of an indictment only and for a motion for dismissal of an indictment or complaint are set forth in Rule 17.06, subd. 2(1) and (2). These grounds are not

~~*the citation or in its omission is harmless unless the defendant was prejudiced comes from F.R.Crim.P. 7(c)(1)(2).* *(See also Minn. Stat. § 628. 19 (1971).)*~~

Rule 17.02, subd. 3 permits counts to be used but prohibits ~~*duplicity*~~*duplication by charging more than one offense in a single count.*

~~*Allegations by reference is taken from F.R.Crim.P. 7(c)(1).*~~

~~*Rule 17.02, subd. 3, following Minn. Stat. § 628.14 (1971), also permits but does not require counts for lesser offenses, and permits allegations in the alternative of the means of committing an offense. (The last sentence of § 628.14 permitting several counts describing the different "classes" to which an offense might belong was not included in the rule because of its ambiguity.)*~~

~~*Rule 17.02, subd. 4 abolishes the bill of particulars. The information supplied by a bill of particulars may be obtained by discovery under Rules 9 or 7.03. If the indictment or complaint is deficient a motion may be made under Rule 17.06, subd. 2(2) and if granted, the indictment or complaint may be amended in accordance with Rule 17.06, subd. 4(3)*~~*.*

~~*If the defect is one that can be cured by an amendment or new indictment or complaint, dismissal is automatically stayed for 7 days during which the prosecuting attorney may move that the stay be continued and the defendant's bail or other conditions of release be continued or modified pending amendment or a new indictment or complaint.* *(Rule 17.06, subd. 4(3)).*~~

~~*If the motion is made, the further stay for that purpose shall be granted but not for more than 60 days for a new indictment (See Rules 18.01, subd. 1; 18.09) or more than 7 days for an amendment or new complaint. The 60-day period permitted for a new indictment allows for the additional time needed to draw and summon the grand jurors and witnesses and to present the case to the grand jury.*~~

intended to be exclusive.

Rule 17.06, subd. 2(1)(a) is available because Rule 18.04, subd. 1 requires a record to be made of the evidence taken before the grand jury. (See also the provisions of 18.04, subd. 1 for the conditions in which the record may be disclosed to the defendant. And see also Rule 18.05, subd. 2.) Upon such a motion, the admissibility and sufficiency of evidence pertaining to indictments is governed by Rules 18.05, subd. 1, and 18.05, subd. 2.

Rule 17.06, subd. 2(2)(f) leaves to judicial decision the constitutional or other requirements of a speedy trial as well as the effect of denying a defendant's demand for trial under Rule 11.08-.09 and Rule 6.06.

By Rule 10.04, subd. 1, a motion to dismiss an indictment or complaint must be served no later than 3 days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases, by Rule 17.06, subd. 3, a motion to dismiss a complaint or tab charge must be served at least 3 days before the pretrial conference or, at least 3 days before the trial if no pretrial conference is held, unless this time is extended for good cause.

The first sentence of Rule 17.06, subd. 4 contemplates that a defendant may plead not guilty and also make a motion to dismiss if the defendant wishes.

To make the basis for dismissal based on a defect in the institution of the prosecution or in the indictment or complaint apparent, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3) for misdemeanor cases, or for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within 7 days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint. On such a motion, the court must continue the case for no more than 7 days pending the filing of a new complaint, or

~~*If the motion is not made within the 7-day time period for making the motion, or if no new indictment is returned within the 60-day period or amendment or new complaint filed within the 7-day period, the case shall be dismissed, the defendant discharged, and further prosecution is barred, unless the prosecution appeals as provided by law (See Minn. Stat. §§ 632.11-632.13 (1971)), or unless the defendant is charged with murder and the court has granted the motion to dismiss on the ground that the evidence before the grand jury was insufficient to establish probable cause. (See Rules 7.06, subd. 2(1)(a); 18.06). It was the opinion of the Advisory Committee that an exception should be made in the case of murder in view of the seriousness of the offense and the absence of a statute of limitations.*~~

~~*Rule 17.03, subd. 1, governing joinder of offenses, adopts the provisions of Minn. Stat. § 609.035 (1971) leaving its judicial interpretations to judicial decision.*~~

~~*Rule 17.03, subd. 2(2), governing the joinder of defendants in misdemeanor cases, adopts the provisions of Minn. Stat. § 631.03 (repealed, 1979 c 233 § 42) which permitted the joinder of two or more defendants when they are jointly charged with the commission of an offense. Severance of offenses or defendants already joined is governed by Rule 17.03, subd. 3.*~~

~~*Rule 17.03, subd. 3, providing that improper joinder of offenses or defendants is not a ground for dismissal but only for mandatory severance, abrogates Minn. Stat. § 630.23(3) which lists misjoinder of offenses as a ground for demurrer. When defendants are properly already joined, severance is governed by Rule 17.03, subd. 2 and Rule 17.03, subd. 3. Part (1) of Rule 17.03, subd. 3, concerning severance of offenses is taken from Unif.R.Crim.P. 472(a) (1987) which is based on ABA Standards for Criminal Justice 13-3.1(a) and (b) (1985). Part (2) of the rule, concerning severance of defendants because of out-of-court statements by a codefendant, is taken from Unif.R.Crim.P. 472(b)(1) (1987) which is based on ABA Standards for Criminal Justice 13-3.2(a) (1985). Part (3) of the rule, concerning severance of defendants during trial is taken from*~~

amending of the complaint or indictment, or for 60 days pending the filing of a new indictment. This filing requirement for a new or amended complaint is not satisfied until the complaint is signed by the judge or other appropriate issuing officer and then filed with the court administrator.

During the time for such a motion and during any continuance, dismissal of the charge is stayed. In a misdemeanor case, the defendant must not be kept in custody. Rule 17.06, subd. 4(3), does not govern dismissals for defects that could not be cured at the time of dismissal by a new or amended complaint or indictment. Therefore, when a complaint or indictment has been dismissed because of insufficient evidence to establish probable cause, the prosecutor may re-prosecute if further evidence is later discovered to establish probable cause. Also under Rule 4.02, subd. 5(3), even if prosecution is reinstituted within the specified period after having been dismissed for failure to file a timely complaint, a summons rather than a warrant must be issued to secure the defendant's appearance in court.

~~Unif.R.Crim.P. 472(b)(2)(ii) (1987) which is based on ABA Standards for Criminal Justice 13-3.2(b)(ii) (1985).~~

~~Rule 17.03, subd. 4, permitting consolidation of indictments, complaints and tab charges follows F.R.Crim.P. 13~~.

Rule 17.03, subd. 5 sets forth procedures for representing two or more defendants who are jointly charged or tried, as set forth in State v. Olsen, 258 N.W.2d 898 (Minn. 1977). ~~The procedures required by Rule 17.03, subd. 5 concerning representation by the same counsel of two or more defendants jointly charged or tried are taken from State v. Olsen, 258 N.W.2d 898 (Minn. 1977).~~ That case requires ~~that the~~ defendants to clearly and unequivocally waive their ~~waiver of~~ constitutional right to separate counsel ~~Sixth Amendment rights obtained from the defendant must be stated in clear and unequivocal language~~. If a record is not made as required or if the record fails to show that the procedures were followed in every important respect, State v. Olsen, supra, places the burden on the prosecut~~ion~~or to establish beyond a reasonable doubt that a prejudicial conflict of interest did not exist.

~~The provision of Rule 17.04 for striking surplusage is taken from F.R.Crim.P. 7(d).~~

Rule 17.05 ~~permitting an amendment of an indictment, complaint or tab charge at any time before verdict or finding unless the defendant will be substantially prejudiced follows F.R.Crim.P. 7(e) and takes the place of the second sentence of Minn. Stat. § 628.19 (1971). The rule~~ leaves ~~to the trial~~ district court~~s~~ to determine ~~the determination of~~ whether the defendant will be substantially prejudiced by an amendment and what steps, if any, including a continuance, may be taken to remove any prejudice that might otherwise result from an amendment. Rule 17.05 does not govern a complaint's~~the~~ amendment ~~of a complaint~~ after a mistrial and before the start of the second trial. Rather, Rule 3.04, subd. 2, which provides for the free amendment of the complaint, controls. State v. Alexander, 290 N.W.2d 745 (Minn. 1980).

~~*Rule 17.06, subd. 1, precluding dismissal for defects in form follows the language of the first sentence of Minn. Stat. § 628.19 (1971).*~~

~~*In addition to the motion to dismiss an indictment for disqualification of individual jurors or the jury panel (See Rule 18.02, subd. 2), Rule 17.06, subd. 2 provides that all objections to an indictment, complaint or tab charge shall be by motion to dismiss or for appropriate relief (Rule 10.01), thus abolishing the demurrer (Minn. Stat. § 630.23 (1971)) and motion to quash or set aside (Minn. Stat. § 630.18) provided by existing law, and superseding those statutes to the extent they are inconsistent with the rule.*~~

Grounds for a motion for dismissal of an indictment only and for a motion for dismissal of an indictment or complaint are set forth in Rule 17.06, subd. 2(1) and (2). These grounds are not intended to be exclusive.

Rule 17.06, subd. 2(1)(a) ~~*providing for a motion for dismissal of an indictment for lack of admissible evidence showing probable cause*~~ *is available because* ~~*of the requirement of*~~ *Rule* ~~*18.05*~~*18.04, subd. 1 requires* ~~*that*~~ *a record to be made of the evidence taken before the grand jury. (See also the provisions of* ~~*18.05*~~*18.04, subd. 1 for the conditions in which the record may be disclosed to the defendant. And see also Rule* ~~*18.06*~~*18.05, subd. 2.) Upon such a motion, the admissibility and sufficiency of evidence pertaining to indictments* ~~*are*~~ *is governed by Rules* ~~*18.06*~~*18.05, subd. 1, and* ~~*18.06*~~*18.05, subd. 2.*

Rule 17.06, subd. 2(2)(f) ~~*listing denial of a speedy trial as a ground for dismissal*~~ *leaves to judicial decision the constitutional or other requirements of a speedy trial as well as the effect of denying a* ~~*a denial of*~~ *defendant's demand for trial under Rule 11.*~~*08-*~~ *.09*~~*10* *and Rule 6.06.*

By Rule ~~*10.04*~~*10.03, subd. 1, a motion to dismiss an indictment or complaint must*~~*shall*~~ *be served no*~~*t*~~ *later than 3 days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases,*

by Rule 17.06, subd. 3, a motion to dismiss a complaint or tab charge must~~shall~~ be served at least 3~~three~~ days before the pretrial conference or, at least 3~~three~~ days before the trial if no pretrial conference is held, unless this time is extended for good cause. ~~Rule 17.06, subd. 4(1) provides that if a defendant's motion to dismiss is denied in a misdemeanor case the defendant may continue to raise the issue involved in the motion on direct appeal if convicted following a trial. The denial of a motion to dismiss based upon a challenge to the personal jurisdiction of the court could therefore be raised on direct appeal of a misdemeanor judgment of conviction. This reverses prior Minnesota case law, which permitted review in such cases only by writ of prohibition. See State v. Stark, 288 Minn. 286, 179 N.W.2d 597 (1970). Permitting the issue of personal jurisdiction to be raised on direct appeal avoids the inconvenience and delay which would often result from continuing the trial to allow the defendant to seek a writ of prohibition.~~

The first sentence of Rule 17.06, subd. 4~~, that if a motion to dismiss is decided adversely to the defendant, the defendant shall be permitted to plead if the defendant has not already done so and that a plea previously entered shall stand, is taken from F.R.Crim.P. 12(b)(5) and takes the place of similar provisions in Minn. Stat. §§ 630.19, 630.26 (1971). (See also Rule 11.10.) This rule~~ contemplates that a defendant may plead not guilty and also make a motion to dismiss if the defendant wishes.

~~The balance of Rule 17.06, subd. 4 relating to the effect of a determination to dismiss the indictment, tab charge or complaint supersedes Minn. Stat. §§ 630.19 – 630.21, 630.25 (1971) and provides uniformity for that purpose. The rule is based on F.R.Crim.P. 12(h)(b). (See also Rule 3.04, subd. 2.)~~

To make~~In order to make apparent~~that the basis ~~of a~~for dismissal based on ~~for~~ a defect in the institution of the prosecution or in the indictment or complaint apparent~~ may be apparent~~, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required

by Rule 4.02, subd. 5(3) for misdemeanor cases, or ~~and also~~ for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within 7 days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint. On~~Upon~~ such a motion, the court must~~shall~~ continue the case for no more than 7 days pending the filing of a new complaint, or amending of the complaint or indictment, or for 60 days pending the filing of a new indictment. This filing requirement for a new or amended complaint is not satisfied until the complaint is signed by the judge or other appropriate issuing officer and then filed with the court administrator.

To make the basis of a dismissal for a defect in the institution of the prosecution or in the indictment or complaint apparent, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3) for misdemeanor cases, or for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within 7 days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint.

During the time for such a motion and during any continuance, dismissal of the charge is stayed.~~, but iI~~n a misdemeanor case, the defendant must~~may~~ not be kept in custody ~~based on that charge~~. ~~A defendant who cannot post bail in a misdemeanor case must be released subject to such nonmonetary conditions as the court deems appropriate under Rule 6.02, subd. 1. If no motion is made or if no new or amended complaint or indictment is filed within the times allowed, the defendant must be discharged and any further prosecution is barred unless the prosecution has appealed or unless the murder case exception applies. However, in misdemeanor cases and also in designated gross misdemeanor cases as defined in Rule 1.04(b) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02,

~~*subd. 5(3), further prosecution is not automatically barred, but is barred only if so ordered by the court. If such a case is dismissed for failure to issue a complaint, but the 30-day time limit established by Rule 4.02, subd. 5(3), has not yet run, the prosecutor may still issue the complaint within the 30-day time limit even without bringing a motion under Rule 17.06, subd. 4(3). The court is not authorized under Rule 17.06, subd. 4(3), to bar further prosecution before the 30-day time limit has run. Before this time limit has run, however, the court may order that further prosecution shall be barred if a valid complaint is not issued within the 30-day time limit. If no complaint is then issued within the 30 days, prosecution is barred without the necessity of further motions, court appearances, or orders.*~~ *Rule 17.06, subd. 4(3), does not govern dismissals for defects that could not be cured at the time of dismissal by a new or amended complaint or indictment. Therefore, when a complaint or indictment has been dismissed because of insufficient evidence to establish probable cause, the prosecutor may re-prosecute if further evidence is later discovered to establish probable cause.* ~~*The prosecutor may not reinstitute the charge by a tab charge under Rule 4.02, subd. 5(3) even for a misdemeanor.*~~ *Also under Rule 4.02, subd. 5(3), even if prosecution is reinstituted within the specified period after having been dismissed for failure to file a timely complaint, a summons rather than a warrant must be issued to secure the* ~~*appearance of the*~~ *defendant's appearance in court.*	

Proposed Revisions to Minn. R. Crim. P. 18

Original Language Showing Markup	Proposed Revised Language
Rule 18. Grand Jury	**Rule 18. Grand Jury**
Rule 18.01 Summoning Grand Juries	**Rule 18.01 Summoning Grand Juries**
Subd. 1. When Summoned. The ~~district~~ court~~, without regard to the beginning or ending of a term of court, shall~~ must order that one or more grand juries be drawn at least annually. The grand jury ~~shall~~must be summoned and convened whenever required by the public interest, or whenever requested by the county attorney. ~~Upon~~On being drawn, each juror ~~shall~~must be notified of selection. The court ~~shall~~must prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel ~~shall~~must be filled in the same manner as ~~provided by this rule~~this rule provides.	Subd. 1. When Summoned. The court must order that one or more grand juries be drawn at least annually. The grand jury must be summoned and convened whenever required by the public interest, or whenever requested by the county attorney. On being drawn, each juror must be notified of selection. The court must prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel must be filled in the same manner as this rule provides.
Subd. 2. How Selected and Drawn. Except as ~~otherwise~~ provided ~~by this rule with respect to~~for St. Louis County, the grand jury must be drawn from a list ~~shall be~~ composed of the names of persons selected at random from a fair cross-section of the statutorily qualified residents of the county~~ who are qualified by law to serve as jurors and shallotherwise be selected as provided by law. The grand jury shallbe drawn from the grand jury list as prescribed by law~~. In St. Louis County, a grand jury list ~~shall~~must be selected ~~at random~~ from ~~a fair cross-section of the~~ residents of each of the 3 districts of ~~the~~ St. Louis County~~ Court district as defined by Minn. Stat. § 487.01, subd. 5(1) who are qualified by law to serve as jurors~~. When the offense is committed nearer to Virginia or Hibbing than to the county seat, the case must be submitted to the grand jury in Virginia or Hibbing. ~~The grand jury list shallotherwise be selected and the grand jurors shallbe drawn from the list as provided by law. Each grand jury so drawn shallserve only in that district of the St. Louis County Court district from which the members of the jury are drawn.~~	Subd. 2. How Selected and Drawn. Except as provided for St. Louis County, the grand jury must be drawn from a list composed of the names of persons selected at random from a fair cross-section of the statutorily qualified residents of the county. In St. Louis County, a grand jury list must be selected from residents of each of the 3 districts of St. Louis County. When the offense is committed nearer to Virginia or Hibbing than to the county seat, the case must be submitted to the grand jury in Virginia or Hibbing.

~~**Rule 18.02 Objections to Grand Jury and Grand Jurors**~~ ~~Subd. 1. Challenges Abolished. Challenges to the grand jury panel and to individual grand jurors are abolished. Objections to the grand jury panel and to individual grand jurors shall be made by motion to dismiss the indictment as hereafter provided.~~ ~~Subd. 2. Motion to Dismiss Indictment. A motion to dismiss an indictment may be based upon any of the following grounds: that the grand jury was not selected, drawn or summoned in accordance with law; or that an individual juror is not legally qualified or that the juror's state of mind prevented the juror from acting impartially. An indictment shall not be dismissed on the ground that one or more of the grand jurors was not legally qualified if it appears from the jury's records that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.~~	
Rule ~~18.03~~ 18.02 Organization of Grand Jury Subd. 1. Members; Quorum. A grand jury ~~shall~~ consists of not more than 23~~,~~ nor ~~less~~fewer than 16~~,~~ persons, and ~~shall~~must not proceed ~~to anybusiness~~ unless at least 16 members are present. Subd. 2. Organization and Proceedings. The grand jury ~~shall~~must be organized and its proceedings ~~shall be~~ conducted as provided by ~~law~~statute, ~~except as otherwise provided by~~unless these rules direct otherwise. Subd. 3. Charge. After swearing the grand jury~~ is sworn~~, the court ~~shall~~must instruct it ~~respecting~~on its duties.	**Rule 18.02 Organization of Grand Jury** Subd. 1. Members; Quorum. A grand jury consists of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present. Subd. 2. Organization and Proceedings. The grand jury must be organized and its proceedings conducted as provided by statute, unless these rules direct otherwise. Subd. 3. Charge. After swearing the grand jury, the court must instruct it on its duties.
Rule ~~18.04~~18.03 Who May Be Present ~~Attorneys for the State~~Prosecutors, the witness under examination, qualified interpreters for witnesses ~~handicapped~~disabled in communication, or for jurors with a sensory disability, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present	**Rule 18.03 Who May Be Present** Prosecutors, the witness under examination, qualified interpreters for witnesses disabled in communication, or for jurors with a sensory disability, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is

while the grand jury is in session.~~, but no~~ No person other than the jurors and any qualified interpreters for any jurors with a sensory disability may be present while the grand jury is deliberating or voting.	in session. No person other than the jurors and any qualified interpreters for any jurors with a sensory disability may be present while the grand jury is deliberating or voting.
~~Upon~~On the court's order ~~of court~~ and a showing of necessity, for ~~the~~security purpose~~s of security~~, a designated peace officer may be present while a specified witness ~~is testifying~~ testifies.	On the court's order and a showing of necessity, for security purposes, a designated peace officer may be present while a specified witness testifies.
If a witness ~~before~~at the grand jury ~~so~~ requests, and has effectively waived ~~immunity~~the privilege ~~from~~ against self-incrimination, or has been granted use immunity, the attorney for the witness may be present while the witness ~~is testifying~~testifies, provided the attorney is ~~then and there available~~present for that purpose, or the attorney's presence can be secured without unreasonable~~y~~ delay~~ing in~~ the grand jury proceedings. The attorney ~~shall not be permitted to~~cannot participate in the grand jury proceedings except to advise and consult with the witness while the witness ~~is testifying~~testifies.	If a witness at the grand jury requests, and has effectively waived the privilege against self-incrimination, or has been granted use immunity, the attorney for the witness may be present while the witness testifies, provided the attorney is present for that purpose, or the attorney's presence can be secured without unreasonably delaying the grand jury proceedings. The attorney cannot participate in the grand jury proceedings except to advise and consult with the witness while the witness testifies.
~~Pursuant to an~~By order of the court based ~~up~~on a particularized showing of need, a witness under the age of 18 may be accompanied by a parent, guardian or other supportive person while that child witness ~~is testifying~~testifies ~~before~~at the grand jury. The parent, guardian or other supportive person ~~shall~~must not ~~be permitted to~~ participate in the grand jury proceedings, and ~~shall~~must not be permitted to influence the content of the witness's testimony.	By order of the court based on a particularized showing of need, a witness under the age of 18 may be accompanied by a parent, guardian or other supportive person while that child witness testifies at the grand jury. The parent, guardian or other supportive person must not participate in the grand jury proceedings, and must not be permitted to influence the content of the witness's testimony.
In choosing the parent, guardian or other supportive person, the court ~~shall~~must determine whether the ~~parent, guardian or other supportive~~ person is appropriate, including whether ~~he or she~~the person may become a witness ~~to the matter~~in the case, or may exert undue influence over the child witness. The court ~~shall~~must instruct the ~~parent, guardian or other supportive~~ person on the~~ir~~ proper role for that person in the grand jury proceedings.	In choosing the parent, guardian or other supportive person, the court must determine whether the person is appropriate, including whether the person may become a witness in the case, or may exert undue influence over the child witness. The court must instruct the person on the proper role for that person in the grand jury proceedings.
Rule ~~18.05~~18.04 Record of Proceedings	**Rule 18.04 Record of Proceedings**
Subd. 1. Verbatim Record. A verbatim record	Subd. 1. Verbatim Record. A verbatim record

~~shall~~must be made ~~by a reporter or recording instrument of the evidence taken beforethe grand jury and~~ of all statements made, evidence taken, and events occurring before the grand jury except ~~during~~ deliberations and voting ~~of the grand jury~~. The ~~required verbatim~~ record ~~shall~~must not include ~~the~~any grand juror's name ~~of any grand juror~~. The record ~~shall not be disclosed except~~ may be disclosed only to the court or ~~prosecuting attorney or~~ prosecutor unless the court, ~~up~~on the defendant's motion ~~by the defendant~~ for good cause ~~shown~~, or ~~up~~on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions ~~thereof~~ of it to the defendant or defense counsel.	must be made of all statements made, evidence taken, and events occurring before the grand jury except deliberations and voting. The record must not include any grand juror's name. The record may be disclosed only to the court or prosecutor unless the court, on the defendant's motion for good cause, or on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions of it to the defendant or defense counsel.
Subd. 2. Transcript. ~~Upon~~ On the defendant's motion, ~~of the defendant~~ and with notice to the ~~prosecuting attorney~~ prosecutor, the ~~district~~ court at any time before trial ~~shall~~must, subject to ~~such~~a protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of: (1) ~~any recorded~~ defendant's grand jury testimony ~~of the defendant before the grand jury in the case against the defendant~~; (2) the ~~recorded~~grand jury testimony of witnesses ~~any persons before the grand jury whom~~ the ~~prosecution~~prosecutor intends to call ~~as witnesses~~ at the defendant's trial; or (3) the ~~recorded~~ grand jury testimony of any witness ~~before the grand jury in the case against the defendant~~, ~~provided that~~ if ~~at the hearing on the motion,~~ defense counsel makes an offer of proof ~~showing~~ that a witness the defendant expects to call ~~the witness~~ at ~~the~~ trial ~~and that the witness~~ will give relevant and favorable testimony ~~favorable to~~for the defendant.	Subd. 2. Transcript. On the defendant's motion, and with notice to the prosecutor, the court at any time before trial must, subject to a protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of: (1) defendant's grand jury testimony; (2) the grand jury testimony of witnesses the prosecutor intends to call at the defendant's trial; or (3) the grand jury testimony of any witness, if defense counsel makes an offer of proof that a witness the defendant expects to call at trial will give relevant and favorable testimony for the defendant.
Rule ~~18.06~~18.05 Kind and Character of Evidence Subd. 1. Admissibility of Evidence. An indictment ~~shall~~must be based on evidence that would be admissible at trial, with these ~~following~~ exceptions: (1) Hearsay evidence offered only to lay the	**Rule 18.05 Kind and Character of Evidence** Subd. 1. Admissibility of Evidence. An indictment must be based on evidence that would be admissible at trial, with these exceptions: (1) Hearsay evidence offered only to lay the

foundation for the admissibility of otherwise admissible evidence ~~shall be admissible provided~~if admissible foundation evidence is available and will be offered at the trial.	foundation for the admissibility of otherwise admissible evidence if admissible foundation evidence is available and will be offered at the trial.
(2) A report ~~or a copy of a report made~~ by a ~~person who is a~~ physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant ~~may~~, when certified by ~~such~~the person as ~~a~~the person's report ~~made by the person or as a true copy thereof, be received as evidence of the facts stated therein~~.	(2) A report by a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant, when certified by the person as the person's report.
(3) Unauthenticated copies of official records ~~shall be admissible provided the copies were made from the original records and properly~~if authenticated copies will be available at ~~the~~ trial.	(3) Unauthenticated copies of official records if authenticated copies will be available at trial.
(4) Written sworn statements of the persons who claim to have title or an interest in property ~~shall be admitted~~ to prove ownership or that the property was obtained without the owner's consent, and written sworn statements of ~~such~~these persons or of experts ~~shall be admitted~~ to prove the value of the property, ~~provided that~~if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.	(4) Written sworn statements of the persons who claim to have title or an interest in property to prove ownership or that the property was obtained without the owner's consent, and written sworn statements of these persons or of experts to prove the value of the property, if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.
(5) Written sworn statements of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person ~~shall be admitted, provided that such~~if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts ~~stated~~contained in the statements.	(5) Written sworn statements of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts contained in the statements.
(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents ~~which~~ that they have examined but ~~which~~that are not produced at the hearing or were not previously submitted to defense counsel for examination, ~~provided~~ if the documents and summaries would otherwise be admissible. ~~It shall be permissible for a~~ A police officer in charge of the investigation ~~to~~may give an oral summary.	(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents that they have examined but that are not produced at the hearing or were not previously submitted to defense counsel for examination, if the documents and summaries would otherwise be admissible. A police officer in charge of the investigation may give an oral summary.
Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an	Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an

indictment ~~when upon all of~~ if the evidence ~~there is~~establishes probable cause to believe ~~that~~ an offense has been committed and ~~that~~ the defendant committed it. Reception of inadmissible evidence ~~shall~~does not ~~be~~provide grounds for ~~dismissal of an~~dismissing the indictment if ~~there is~~ sufficient admissible evidence exists to support the indictment.	indictment if the evidence establishes probable cause to believe an offense has been committed and the defendant committed it. Reception of inadmissible evidence does not provide grounds for dismissing the indictment if sufficient admissible evidence exists to support the indictment.
Subd. 3. Presentments Abolished. The grand jury may not find or return a presentment.	Subd. 3. Presentments Abolished. The grand jury may not find or return a presentment.
Rule ~~18.07~~18.06 Finding and Return of Indictment	**Rule 18.06 Finding and Return of Indictment**
An indictment may ~~be found~~ only ~~upon the~~issue ~~concurrence of~~if at least 12 ~~or more~~ jurors concur. ~~When so found, it~~The indictment ~~shall~~must be signed by the foreperson, whether the foreperson ~~be~~was one of the 12 who ~~concurring~~concurred or not, and delivered to a judge in open court. If 12 jurors ~~shall~~do not concur in ~~finding~~issuing an indictment, the foreperson ~~shall so report~~must promptly inform the court in writing ~~to the court forthwith, and any charges~~. Charges filed against the defendant for ~~the~~ offenses ~~considered and upon~~ which no indictment was ~~returned shall~~issued must be dismissed. The failure to ~~find~~issue an indictment or the dismissal of the charge ~~shall~~does not prevent the case from again being submitted to a grand jury as often as the court ~~shall~~ directs.	An indictment may only issue if at least 12 jurors concur. The indictment must be signed by the foreperson, whether the foreperson was one of the 12 who concurred or not, and delivered to a judge in open court. If 12 jurors do not concur in issuing an indictment, the foreperson must promptly inform the court in writing. Charges filed against the defendant for offenses on which no indictment was issued must be dismissed. The failure to issue an indictment or the dismissal of the charge does not prevent the case from again being submitted to a grand jury as often as the court directs.
Rule ~~18.08~~18.07 Secrecy of Proceedings	**Rule 18.07 Secrecy of Proceedings**
Every grand juror and every qualified interpreter for a grand juror with a sensory disability present during deliberations or voting ~~shall~~ must keep secret whatever that juror or any other juror has said during deliberations and how that juror or any other juror ~~has~~ voted.	Every grand juror and every qualified interpreter for a grand juror with a sensory disability present during deliberations or voting must keep secret whatever that juror or any other juror has said during deliberations and how that juror or any other juror voted.
Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the ~~prosecuting attorney~~prosecutor for use in the performance of the ~~prosecuting attorney's~~prosecutor's duties, and to the defendant or defense counsel ~~pursuant to~~ under Rule ~~18.05~~18.04 ~~of this rule~~ governing the record of the grand jury proceedings. Otherwise, no ~~juror, attorney, interpreter, stenographer,~~	Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecutor for use in the performance of the prosecutor's duties, and to the defendant or defense counsel under Rule 18.04 governing the record of the grand jury proceedings. Otherwise, no one may disclose matters occurring before the grand jury unless directed to do so by the court in connection

~~reporter, operator of a recording device, typist who transcribes recorded testimony, clerk of court, law enforcement officer, parent, guardian or other supportive person who attended the grand jury in accordance with Rule 18.04 while a child testified, or court attaché~~one may disclose matters occurring before the grand jury ~~except when~~unless directed to do so by the court ~~preliminary to or~~ in connection with a judicial proceeding. ~~\~~Unless the court otherwise directs~~ otherwise~~, no person ~~shall~~may disclose the finding of an indictment until the defendant is in custody or appears before the court~~ except~~, unless~~ when~~ necessary for the issuance and execution of a summons or warrant~~,~~. ~~provided, however~~However, disclosure may be made by~~ the prosecuting attorney~~ the prosecutor by notice to the defendant or defense counsel of the indictment and the time of defendant's appearance in the district court, if in the prosecutor's discretion ~~of the prosecuting attorney such~~the notice ~~is sufficient~~suffices to insure defendant's appearance.	with a judicial proceeding. Unless the court otherwise directs, no person may disclose the finding of an indictment until the defendant is in custody or appears before the court, unless necessary for the issuance and execution of a summons or warrant. However, disclosure may be made by the prosecutor by notice to the defendant or defense counsel of the indictment and the time of defendant's appearance in the district court, if in the prosecutor's discretion the notice suffices to insure defendant's appearance.
Rule ~~18.09~~18.08 Tenure and ~~Excuse~~Excusal Subd. 1. Tenure. A grand jury ~~shall~~must be drawn ~~to serve~~ for a specified period of ~~time~~service, not to exceed 12 months, as designated by court order~~ of court~~. ~~It shall~~The grand jury must not be discharged, and its powers ~~shall~~must continue until the latest of the following: (a) ~~until~~ the ~~specified~~ period of ~~its~~ service is completed~~ or~~; (b) ~~until~~ its successor is drawn~~ or~~; or (c) ~~until~~ it has completed an investigation, already begun, of a particular offense~~, whichever is the later~~. ~~The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court.~~ Subd. 2. Excusal. ~~At any time for~~For cause shown, the court may excuse a juror ~~either~~ temporarily or permanently~~., and in either event the~~ The court may impanel another person in place of the excused juror~~ excused~~.	**Rule 18.08 Tenure and Excusal** Subd. 1. Tenure. A grand jury must be drawn for a specified period of service, not to exceed 12 months, as designated by court order. The grand jury must not be discharged, and its powers must continue until the latest of the following: (a) the period of service is completed; (b) its successor is drawn; or (c) it has completed an investigation, already begun, of a particular offense. Subd. 2. Excusal. For cause shown, the court may excuse a juror temporarily or permanently. The court may impanel another person in place of the excused juror.

Rule 18.09 Objections to Grand Jury and Grand Jurors

Subd. 1. Motion to Dismiss Indictment. Objections to the grand jury panel and to individual grand jurors must be made by motion to dismiss the indictment as this rule provides.

Subd. 2. Grounds for Dismissal. A motion to dismiss an indictment may be based on any of the following:

(a) the grand jury was not selected, drawn or summoned in accordance with law;
(b) an individual juror was not legally qualified; or
(c) the juror's state of mind prevented the juror from acting impartially.

An indictment must not be dismissed on the ground that one or more of the grand jurors was not statutorily qualified if it appears from the records that 12 or more qualified jurors concurred in finding the indictment.

Comment—Rule 18

~~*Rule 18.01, subd. 1 follows substantially the first sentence of F.R.Crim.P. 6 except that it requires that a grand jury shall be summoned not only whenever required by the public interest but also when requested by the county attorney. In this respect, it also changes Minn. Stat. § 628.42 (1971). Rule 18.01, subd. 1, permits more than one grand jury to be drawn or to serve at one time.*~~

~~*Under Rules 18.01, subd. 1 and 18.09 the grand jury shall be drawn and summoned and shall serve without regard to terms of court. This changes Minn. Stat. § 628.42, providing that the grand jury shall be drawn and summoned for a general term of court and requiring the order therefor to be entered 15 days before the term, and also changes Minn. Stat. § 628.46 (1971) which requires the venire for the grand jury panel to be issued 12 days before the first day of the term and summons to be served on the grand jurors 10 days before the beginning of the term. It also changes Minn. Stat. § 484.30 (1971) providing for a grand jury to be ordered for a special term of court.*~~

Rule 18.09 Objections to Grand Jury and Grand Jurors

Subd. 1. Motion to Dismiss Indictment. Objections to the grand jury panel and to individual grand jurors must be made by motion to dismiss the indictment as this rule provides.

Subd. 2. Grounds for Dismissal. A motion to dismiss an indictment may be based on any of the following:

(a) the grand jury was not selected, drawn or summoned in accordance with law;
(b) an individual juror was not legally qualified; or
(c) the juror's state of mind prevented the juror from acting impartially.

An indictment must not be dismissed on the ground that one or more of the grand jurors was not statutorily qualified if it appears from the records that 12 or more qualified jurors concurred in finding the indictment.

Comment—Rule 18

Rule 18.01, subd. 2 complies with the constitutional requirement that the persons on the grand jury list must be selected at random from a fair cross section of the qualified residents of the county. The method by which this must be done is left to the determination of the jury commission or judges making the selection of persons for the list.

Rule 18.01, subd. 2 includes special provisions governing St. Louis County based on Minn. Stat. §§ 484.46 and 484.48.

Rule 18.03 allows qualified interpreters for jurors with sensory disabilities to be present during grand jury proceedings including deliberations or voting. This is in accord with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the

Rule 18.01, subd. 2 ~~continues statutory law (See Minn. Stat. §§ 593.13, 593.14 (1971).) For the selection of persons for the grand jury list from which the grand jury are to be drawn and summoned, except that, adopting the policy expressed in the Federal Jury Selection Act, 28 U.S.C. § 1861, and to meet~~ complies with the constitutional requirement~~s, Rule 18.01, subd. 2 requires~~ that the persons on the grand jury list ~~shall~~must be selected at random from a fair cross section of the qualified residents of the county. The method by which this ~~shall~~must be done is left to the determination of the jury commission or judges making the selection of persons for the list. ~~This changes the "key-man" selection process now followed in Ramsey, St. Louis and Hennepin Counties.~~

Rule 18.01, subd. 2 ~~continues~~includes special provisions governing St. Louis County~~. Rule 18.01, subd. 2 continues existing practice provided by law (Minn. Stat. §§ 628.42, 628.45, 628.46 (1971)) for drawing the jurors from the grand jury list. The time and manner of summoning grand jurors shall be prescribed by rule or order of court.~~ based on Minn. Stat. §§ 484.46 and 484.48.

~~Rule 18.02, subd. 1 abolishes the challenges to the grand jury panel and to individual jurors provided by Minn. Stat. § 628.52 (1971) and provides that objections to the panel and individual jurors shall be made solely by motion to dismiss the indictment. (See also Rule 17.06, subd. 2(1)).~~

~~The grounds for objections to the panel or to individual jurors enumerated in Minn. Stat. §§ 628.53, 628.54 (1971) are intended to be preserved by Rule 18.02, subd. 2 together with any other objections based on the grounds specified in Rule 18.02, subd. 2.~~

~~The effect of a dismissal of an indictment under Rule 18.02, subd. 2 is covered by Rule 17.06, subd. 4.~~

~~The second sentence of Rule 18.02, subd. 2 adopts F.R.Crim.P. 6(b)(2) that the indictment shall not be dismissed for disqualification of individual jurors if 12 or more other jurors~~ Americans with Disabilities Act. 42 U.S.C. § 12101 et seq.

Under Rule 18.04, subd. 1, the record may be disclosed to the court or to the prosecutor, and to the defendant for good cause, which would include a "particularized need," Dennis v. United States, 384 U.S. 855, 869-70 (1966), or on a showing that grounds exist for a motion to dismiss the indictment because of occurrences before the grand jury. In addition, the defendant, under Rule 9.01, subd. 1, may obtain from the prosecutor any portions of the grand jury proceedings already transcribed and possessed by the prosecutor.

Rule 18.04, subd. 2, supplementing the discovery rules (Rule 9.01, subd. 1), permits the defendant to obtain a transcript of the testimony of grand jury witnesses, subject to protective orders under Rule 9.03, subd. 5. See ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iii) (Approved Draft, 1970). This rule does not preclude the court from ordering that the defendant be supplied with the transcript during the trial, on a showing of good cause.

Canon 5 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System bolsters the confidentiality requirement of interpreters under Rule 18.07.

Rule 18.07 leaves it to the discretion of the prosecutor to determine whether to notify the defendant or defense counsel of the indictment without the issuance of a warrant or summons. But see Minn. Stat. § 628.68 (leaving it to the court's, not prosecutor's, discretion).

The effect of a dismissal of an indictment under Rule 18.09 is covered by Rule 17.06, subd. 4.

~~*concurred in the indictment.*~~

~~*Rule 18.03, subd. 1 continues present statutory law (Minn. Stat. § 628.41) as to the number of grand jury members and the quorum needed to conduct business.*~~

~~*Rule 18.03, subd. 2 continues present statutory law (Minn. Stat. §§ 628.56, 628.57 (1971)) for the organization and conduct of the proceedings of a grand jury except as otherwise provided by these rules. (See Rules 18.03, subd. 3 (charge), 18.04 (who may be present), 18.05, subd. 1 (record), 18.06 (kind and character of evidence).)*~~

~~*Rule 18.03, subd. 3 permits the court to instruct the jury under applicable rules and statutes without reading any particular statutes or rules.*~~

~~*Rule 18.04, specifying the persons who may be present before the grand jury, except when the jurors are deliberating or voting, is intended to take the place of those portions of Minn. Stat. §§ 628.63 and 630.18(3) (1971) which permit only the county attorney to be present at the request of the grand jury to examine the witnesses. The prosecuting attorney is entitled under the rule to be present whether the jury requests it or not.*~~

~~*Rule 18.04 also permits the presence of the following: qualified interpreters for those handicapped in communication as defined in Rule 5 and Minn. Stat. §§ 611.31 611.34 (1992); reporters or operators of a recording instrument to make the record required by Rule 18.05, subd. 1 (see F.R.Crim.P. 6(d)); a designated peace officer; and the attorney for a witness who has either effectively waived immunity from self-incrimination or been granted use immunity by the court.*~~

Rule ~~18.04~~ ~~also~~18.03 allows qualified interpreters for jurors with sensory disabilities to be present during grand jury proceedings including deliberations or voting. This is in accord with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this

provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. § 12101 et seq.

~~Rule 18.05, subd. 1, providing for a verbatim record of all statements made and events occurring before the grand jury except during deliberations and voting, supercedes that portion of Minn. Stat. § 628.57 (1971) which provided that the minutes of the evidence taken before the grand jury shall not be preserved. (Minn. Stat. §§ 628.65, 628.66 (1971) are not affected.) This rule as amended is similar to the special rule of practice for the First Judicial District which was upheld by the Supreme Court in State v. Hejl, 315 N.W.2d 592 (Minn.1982) as being consistent with the original language of Rule 18.05. The purpose of Rule 18.05 as amended is to assure that everything said or occurring before the grand jury will be recorded except during deliberations and voting. This would include any statements made by the prosecuting attorney to the grand jury whether or not any witnesses are present. However, the names of the grand jurors are not to be recorded. Of course, under Rule 18.04 only grand jury members may be present during deliberations and voting.~~

Under Rule ~~18.05~~18.04, subd. 1, the record may be disclosed to the court or to the ~~prosecuting attorney~~prosecutor, and to the defendant for good cause, ~~(This~~which would include a "particularized need~~.~~," Dennis v. United States, 384 U.S. 855, 869-~~8~~70 (1966)~~.)~~ or on a showing that grounds exist for a motion to dismiss the indictment because of occurrences before the grand jury. In addition, the defendant, under Rule 9.01, subd. 1, may obtain from the ~~prosecuting attorney~~prosecutor any portions of the grand jury proceedings already transcribed and possessed by the ~~prosecuting attorney~~prosecutor.

Rule ~~18.05~~18.04, subd. 2, supplementing the discovery rules (Rule 9.01, subd. 1), permits the defendant to obtain a transcript of the testimony of grand jury witnesses, subject to protective orders under Rule 9.03, subd. 5. ~~(~~See ABA Standards, Discovery and Procedure Before Trial, 2.1(a)(iii) (Approved Draft, 1970).~~)~~ This rule does not preclude the court from ordering that the

defendant be supplied with ~~such a~~the transcript during the trial, ~~up~~on a showing of good cause.

~~*Rule 18.06, subd. 1 supersedes Minn. Stat. § 628.59 (1971).*~~

~~*Rule 18.06, subd. 2, providing that an indictment may be found upon probable cause changes Minn. Stat. § 628.03 (1971) and that part of § 628.02 which is inconsistent with the rule.*~~

~~*Rule 18.06, subd. 3, abolishes the presentment provided by Minn. Stat.§§ 628.03, 628.04 (1971).*~~

~~*Rule 18.07 adopts the substance of Minn. Stat. § 628.08 (1971) except that the indictment shall bear only the signature of the foreperson instead of the foreperson's signed endorsement that it is a true bill. The requirement of Rule 18.07 that an indictment be "delivered to a judge in open court" is not inconsistent with the general requirement of Rule 18.08 that no person shall disclose the finding of an indictment until the defendant is in custody or appears before the court. Delivery of the indictment does not mean that it must be read or disclosed in court. Also under Rule 33.04 the prosecuting attorney may request the court to delay the filing of the indictment until the arrest of the defendant involved.*~~

~~*The provision that if an indictment is not voted, the foreperson shall so report to the court forthwith in writing (See F.R.Crim.P. 6(f).) was not contained in Minn. Stat. § 628.08 (Repealed, 1979 c. 233, § 42).*~~

~~*The provisions of the first sentence of Rule 18.08 for secrecy on the part of the grand jurors is taken from Minn. Stat. § 628.64 (1971). Additionally it provides that any interpreters for grand jurors with a sensory disability shall have that same obligation of secrecy. As to the confidentiality obligation of interpreters generally see*~~ *Canon 5 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System* *bolsters the confidentiality requirement of interpreters under Rule 18.07*.

~~*That part of the second sentence of Rule 18.08 providing for disclosures to the prosecuting attorney for use in the performance of the*~~

~~*prosecuting attorney's duties comes from F.R.Crim.P. 6(e). The provision in the second sentence for disclosure to the defendant is in accord with Rule 18.05. The third sentence of Rule 18.08 imposing secrecy on the persons named except as permitted by Rules 18.08 and 18.05 or except when ordered by the court in connection with a judicial proceeding, is taken from F.R.Crim.P. 6(e).*~~ ~~*The first part of the last sentence of Rule 18.08 forbidding disclosure of an indictment until the defendant is in custody or appears in court except when necessary for the issuance of a warrant or summons (See Rule 19.01) is taken from F.R.Crim.P. 6(e); and the following proviso adopts the substance of the last sentence of Minn. Stat. § 628.68 (1971). The rule, however,*~~*Rule 18.07 leaves it to the discretion of the* ~~*prosecuting attorney*~~*prosecutor to determine whether to notify the defendant or defense counsel of the indictment without the issuance of a warrant or summons. But see Minn. Stat. § 628.68 (leaving it to the court's, not prosecutor's, discretion).* ~~*Rule 18.09 making the grand jury session independent of the terms of court adopts the substance of F.R.Crim.P. 6(g) and takes the place of Minn. Stat. § 628.58 (1971). (See also Rule 18.01, subd. 1.)*~~ ~~*The object of Rules 18.09 and 18.01, subd. 1 is that a grand jury shall always be available, without regard to terms of court, to be summoned into session and convened when required under Rule 18.01 or otherwise.*~~ ~~*That portion of Rule 18.09 authorizing the court to excuse a grand juror for good cause is taken from F.R.Crim.P. 6(g), and enlarges the power of the court under Minn. Stat. § 628.49 (1971). The court may excuse grand jurors for the reasons specified in § 628.49 and upon other grounds showing good cause.*~~ *The effect of a dismissal of an indictment under Rule 18.09 is covered by Rule 17.06, subd. 4.*	

Proposed Revisions to Minn. R. Crim. P. 19

Original Language Showing Markup	Proposed Revised Language
Rule 19. Warrant or Summons Upon Indictment; Appearance Before District Court	**Rule 19. Warrant or Summons Upon Indictment; Appearance Before District Court**
Rule 19.01 Issuance	**Rule 19.01 Issuance**
~~When~~ On the filing of an indictment ~~is filed~~, the court must issue a warrant for the arrest of each defendant named in the indictment ~~shall be issued by the court upon the request of the prosecuting attorney~~, except that the court may issue a summons instead of a warrant ~~shall be issued upon~~when the prosecutor requests ~~of the prosecuting attorney~~ or ~~by direction of~~ the court directs, or if the defendant is a corporation.	On the filing of an indictment, the court must issue a warrant for the arrest of each defendant named in the indictment, except that the court may issue a summons instead of a warrant when the prosecutor requests or the court directs, or if the defendant is a corporation.
~~If the defendant is in custody, the~~The court may order ~~the officer having the~~an indicted defendant already in custody to ~~bring the defendant~~be brought before the court at a specified date and time ~~and date~~.	The court may order an indicted defendant already in custody to be brought before the court at a specified date and time.
More than one warrant or summons may be issued for the same defendant. If a defendant, other than a corporation, ~~for whom a summons has been issued~~ fails to appear in response to a summons, a warrant ~~shall be~~must issue~~d~~.	More than one warrant or summons may be issued for the same defendant. If a defendant, other than a corporation, fails to appear in response to a summons, a warrant must issue.
Rule 19.02 Form	**Rule 19.02 Form**
Subd. 1. Warrant. The warrant ~~shall~~ must: (a) be signed by ~~the~~a judge; ~~shall~~ (b) contain the defendant's name ~~of the defendant~~ or, if ~~that name is~~ unknown, any name or description by which the defendant can be identified with reasonable certainty; ~~shall~~ (c) describe the offense charged ~~in the indictment~~; and ~~shall~~ (d) command ~~that~~ the defendant's ~~be~~ arrest~~ed~~ and appearance ~~brought before the~~in court.	**Subd. 1. Warrant.** The warrant must: (a) be signed by a judge; (b) contain the defendant's name or, if unknown, any name or description by which the defendant can be identified with reasonable certainty; (c) describe the offense charged; and (d) command the defendant's arrest and appearance in court.
The amount of bail and other conditions of release may be set by the court and ~~endorsed on~~stated in the warrant.	The amount of bail and other conditions of release may be set by the court and stated in the warrant.
Subd. 2. Summons. The summons ~~shall~~must be signed by the ~~judge~~court and ~~shall~~must	**Subd. 2. Summons.** The summons must be signed by the court and must summon the

summon the defendant to appear before the court at a specified time and place to answer to the indictment. A copy of the indictment ~~shall~~must be attached to the summons.	defendant to appear before the court at a specified time and place to answer to the indictment. A copy of the indictment must be attached to the summons.
Rule 19.03. ~~Execution or Service; Certification of Execution or~~ Service of the Indictment	**Rule 19.03. Service of the Indictment**
Subd. 1. By Whom. ~~The warrant may be executed by any~~Any officer authorized by law may execute the warrant~~. The~~ and if authorized may also serve the summons. ~~may be served by any officer authorized to execute a warrant, and if served~~The court administrator may serve the summons by mail~~, it may be served by the clerk~~.	**Subd. 1. By Whom.** Any officer authorized by law may execute the warrant, and if authorized may also serve the summons. The court administrator may serve the summons by mail.
Subd. 2. Territorial Limits. The warrant may be executed or the summons ~~may be~~ served ~~at~~ any place ~~with~~in the state, except where prohibited by law.	**Subd. 2. Territorial Limits.** The warrant may be executed or the summons served any place in the state, except where prohibited by law.
Subd. 3. Manner. The warrant ~~shall~~must be executed or the summons served ~~in the manner~~as ~~provided by~~specified in Rule 3.03, subd. 3.	**Subd. 3. Manner.** The warrant must be executed or the summons served as specified in Rule 3.03, subd. 3.
Subd. 4. Certification. The execution of a warrant or the service of a summons ~~shall~~must be certified as ~~provided by~~specified in Rule 3.03, subd. 4.	**Subd. 4. Certification.** The execution of a warrant or the service of a summons must be certified as specified in Rule 3.03, subd. 4.
Subd. 5. Unexecuted Warrants. At the prosecutor's request ~~of the prosecuting attorney~~ made ~~at any time while~~ during the pendency of the indictment~~ is pending~~, a warrant returned unexecuted or a summons returned unserved, or a duplicate ~~thereof~~of either, may be delivered to any authorized officer or person for execution or service.	**Subd. 5. Unexecuted Warrants.** At the prosecutor's request made during the pendency of the indictment, a warrant returned unexecuted or a summons returned unserved, or a duplicate of either, may be delivered to any authorized officer or person for execution or service.
Rule 19.04 Defendant's Appearance ~~of Defendant Before~~in Court	**Rule 19.04 Defendant's Appearance in Court**
Subd. 1. Appearance. The defendant ~~shall~~must be taken promptly before the district court ~~which~~that issued the warrant.	**Subd. 1. Appearance.** The defendant must be taken promptly before the district court that issued the warrant.
Subd. 2. Statement to Defendant. A defendant appearing initially ~~before~~in the district court under ~~a~~n arrest warrant ~~of arrest~~, or in response to a summons, ~~shall~~must be advised of the charges. If the defendant has not received a	**Subd. 2. Statement to Defendant.** A defendant appearing initially in the district court under an arrest warrant, or in response to a summons, must be advised of the charges. If the defendant has not received a copy of the

copy of the indictment, the defendant ~~shall~~must be provided with ~~a copy~~one.	indictment, the defendant must be provided with one.
The court ~~shall~~must also advise the defendant ~~substantially as required by~~in accordance with Rule ~~5.01~~5.03 (Statement of Rights).	The court must also advise the defendant in accordance with Rule 5.03 (Statement of Rights).
Subd. 3. Appointment of Counsel. If the defendant is not represented by counsel and ~~is~~cannot financially ~~unable to~~ afford counsel, the court ~~shall~~must appoint counsel as set out in Rule 5.0~~2~~4~~for the defendant~~.	**Subd. 3. Appointment of Counsel.** If the defendant is not represented by counsel and cannot financially afford counsel, the court must appoint counsel as set out in Rule 5.04.
Subd. 4. Date for Arraignment. ~~Upon~~The court may arraign the defendant~~'s~~ at the defendant's initial appearance ~~before the district court~~ on the indictment, ~~the defendant may be arraigned, upon~~if the defendant~~'s~~ so requests and ~~with~~ the court consents ~~of the court~~. If the court does not arraign the defendant ~~is not arraigned~~ at the initial appearance, ~~a~~it must set a date ~~shall be set~~ for the arraignment ~~upon the indictment~~ not more than ~~seven (~~7~~)~~ days from the ~~date of such~~ initial appearance. The court ~~time for appearance~~ may ~~be~~ extend~~ed by the district court~~ this date for good cause. ~~Upon~~ At the~~defendant's~~ arraignment, whether at the initial appearance or at some later appearance ~~prior to~~before the Omnibus Hearing, the defendant may only enter a plea of guilty. A defendant who does not wish to plead guilty ~~shall~~must not be ~~called upon~~asked to enter any other plea, and the arraignment ~~shall~~must be continued until the Omnibus Hearing, where, ~~when pursuant to~~under Rule ~~11.10~~11.08 (Pleas), the defendant ~~shall~~must plead to the indictment, or be given additional time ~~within which~~ to plead.	**Subd. 4. Date for Arraignment.** The court may arraign the defendant at the defendant's initial appearance on the indictment, if the defendant so requests and the court consents. If the court does not arraign the defendant at the initial appearance, it must set a date for the arraignment not more than 7 days from the initial appearance. The court may extend this date for good cause. At the arraignment, whether at the initial appearance or at some later appearance before the Omnibus Hearing, the defendant may only enter a plea of guilty. A defendant who does not wish to plead guilty must not be asked to enter any other plea, and the arraignment must be continued until the Omnibus Hearing, where, under Rule 11.08 (Pleas), the defendant must plead to the indictment, or be given additional time to plead.
Subd. 5. Omnibus Hearing Date and Procedure. If ~~upon~~at arraignment~~,~~ the defendant does not plead guilty, ~~a date shall be fixed,~~the court must schedule an Omnibus Hearing under Rule 11 not more than seven ~~(~~7~~)~~ days from the ~~date of the~~ arraignment, unless the court extends the time for good cause ~~on motion of the prosecuting attorney or the defendant or upon the court's initiative, extends the time, when an Omnibus Hearing shall be held in accordance with Rule 11~~.	**Subd. 5. Omnibus Hearing Date and Procedure.** If at arraignment the defendant does not plead guilty, the court must schedule an Omnibus Hearing under Rule 11 not more than seven 7 days from the arraignment, unless the court extends the time for good cause.

Subd. 6. Notice by Prosecut~~ing~~or ~~Attorney~~. The procedures set out in Rule 7.01 (Notice of Omnibus Issues), Rule 7.02 (Notice of Other Offenses), and 7.03 (Notice of Intent to Seek Aggravated Sentence) apply to cases prosecuted by indictment. ~~(1) Notice of Evidence and Identification Procedures. When the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping, (2) any confessions, admissions or statements in the nature of confessions made by the defendant, (3) any evidence against the defendant discovered as the result of confessions, admissions or statements in the nature of confessions made by the defendant, or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to line-ups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney, on or before the date set for defendant's arraignment, shall notify the defendant or defense counsel in writing of such evidence and identification procedures.~~ ~~(2) Notice of Additional Offenses. The prosecuting attorneys shall notify the defendant or defense counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. The notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offense becomes known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which the defendant has been previously prosecuted, or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged in the indictment arose.~~ ~~(3) Notice of Intent to Seek Aggravated Sentence. At least seven days prior to the Omnibus Hearing, or at such later time if permitted by the court upon good cause shown and upon such conditions as will not unfairly prejudice the defendant, the prosecuting attorney shall notify the defendant or defense counsel in writing of~~	**Subd. 6. Notice by Prosecutor.** The procedures set out in Rule 7.01 (Notice of Omnibus Issues), Rule 7.02 (Notice of Other Offenses), and 7.03 (Notice of Intent to Seek Aggravated Sentence) apply to cases prosecuted by indictment.

~~intent to seek an aggravated sentence. The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence.~~

Subd. 7. Completion of Discovery. The procedure set out in Rule 7.04 for completion of discovery in felony, gross misdemeanor, and misdemeanor cases applies to cases prosecuted by indictment. ~~Before the date set for the Omnibus Hearing the prosecution and defendant shall complete the discovery that is required by Rules 9.01, subd. 1 and 9.02, subd. 1 to be made without the necessity of an order of court.~~

Subd. 7. Completion of Discovery. The procedure set out in Rule 7.04 for completion of discovery in felony, gross misdemeanor, and misdemeanor cases applies to cases prosecuted by indictment.

Rule 19.05 Bail or Conditions of Release

~~Upon~~At the defendant's initial appearance ~~before the~~in the district court following ~~an~~ indictment, the court may, in accordance with Rule 6 (Pretrial Release), set bail or other conditions of release, or may continue or modify bail or conditions of release previously ordered.

Rule 19.05 Bail or Conditions of Release

At the defendant's initial appearance in the district court following indictment, the court may, in accordance with Rule 6 (Pretrial Release), set bail or other conditions of release, or may continue or modify bail or conditions of release previously ordered.

Rule 19.06 Record

A verbatim record ~~shall~~must be made ~~of the proceedings before the court upon~~at the defendant's initial appearance, ~~and~~ arraignment, and ~~of the~~ Omnibus Hearing.

Rule 19.06 Record

A verbatim record must be made at the defendant's initial appearance, arraignment, and Omnibus Hearing.

Comment—Rule 19

Rule 19 relating to the warrant or summons on an indictment and the subsequent procedures parallels for the most part Rules 3, 4, 5, ~~7,~~ 8, 11 governing the warrant or summons on a complaint and the procedures ~~thereafter~~subsequently followed, all of which lead up to the Omnibus Hearing under Rule 11. Rule 19 reflects ~~The~~the necessary differences between the ~~two~~ procedures under an indictment and under a complaint ~~complaint are reflected in Rule 19~~.

Comment—Rule 19

Rule 19 relating to the warrant or summons on an indictment and the subsequent procedures parallels for the most part Rules 3, 4, 5, 8, 11 governing the warrant or summons on a complaint and the procedures subsequently followed, all of which lead up to the Omnibus Hearing under Rule 11. Rule 19 reflects the necessary differences between the procedures under an indictment and under a complaint.

If a corporation does not respond to a summons issued under Rule 19.01 the court may proceed as provided in Rule 14.02, subd. 5.

The parties must serve their motions under Rule 10 at least 3 days before the Omnibus Hearing (Rule 10.03) (including motions to suppress based on the Rasmussen notice given

~~*Rule 19.01 provides for the issuance of a warrant of arrest or summons upon an indictment when requested by the prosecuting attorney, and a summons shall be issued when directed by the court. (See F.R.Crim.P. 9(a).) (Rule 19.01 takes the place of Minn.Stat. §§ 630.02, 630.03 (1971) providing for bench warrants.) (See also Rule*~~

~~*18.08 providing for notice to the defendant or defense counsel at the discretion of the prosecuting attorney.)*~~

~~*That part of Rule 19.01 providing for the issuance of a summons for a corporation takes the place of Minn.Stat. § 630.15 (1971).*~~

~~*The provision of Rule 19.01 that a defendant in custody may be ordered by the court to be brought before the court at a specified time and place is taken from Minn. Stat. § 630.01 (1971).*~~

~~*Rule 19.01 permits more than one warrant or summons to be issued upon the same indictment as for example, for codefendants. (See F.R.Crim.P. 9(a).)*~~

~~*If a defendant other than a corporation does not respond to a summons a warrant shall issue. (See F.R.Crim.P. 9(a).)*~~ *If a corporation does not respond to a summons* *issued under Rule 19.01*~~,~~ *the court may proceed as provided in Rule 14.02, subd. 4*5*.*

~~*Rule 19.02, subd. 1 provides that the warrant shall be signed by a judge of the district court. The form of the warrant follows substantially that prescribed for a warrant upon a complaint by Rule 3.02, subd. 1 except that the indictment warrant directs the defendant to be brought before the district court, and Rule 19.04, subd. 1 requires that this be done promptly.*~~

~~*The amount of bail and other conditions of release may be set by the district court (See Rule 6.02) and endorsed on the warrant. (See F.R.Crim.P. 9(b)(1) and Minn.Stat. § 630.05 (1971).) (See also Rule 19.05).*~~

~~*The form of summons prescribed by Rule 19.02, subd. 2 is substantially the same as that prescribed by Rule 3.02, subd. 3 for a summons on a complaint.*~~

~~*Rule 19.03 governing execution or service of a warrant or summons upon an indictment and proof of execution or service follows substantially Rule 3.03 governing the similar procedures relating to a warrant or summons on a complaint.*~~

under Rule 19.04, subd. 6). (See also comments to Rule 11.03.)

The Omnibus Hearing must be held in the district court in accordance with the provisions of Rule 11. (See comments to Rule 11.) If at the Omnibus Hearing the defendant wishes to challenge the sufficiency of the evidence heard by the grand jury to support the indictment, Rules 17.06, subd. 2(1)(a) and 18.05, subds. 1 and 2 govern that challenge. The provision in Rule 11.03 concerning a motion that an insufficient showing of probable cause has been made applies only to complaints and not to indictments.

~~*Upon the defendant's first appearance before the district court under Rule 19.04, the defendant shall be advised of the charges; provided with a copy of the indictment; given the advice required by Rule 5.01; counsel shall be appointed for a defendant who is unrepresented and unable to afford counsel (Rule 19.04, subd. 3); the bail or conditions of release set, continued, or modified in accordance with the provisions of Rule 6.02 (Rule 19.05); and a date shall be fixed for arraignment (Rule 13), which shall be held not more than 7 days after the appearance in district court, unless the time is extended for good cause. (Rule 19.04, subd. 5). Instead of having a separate arraignment, Rule 19.04, subd. 4, permits the arraignment and initial appearance to be consolidated. This is possible only if requested by the defendant and agreed to by the court. Ordinarily, the Omnibus Hearing would then be held within seven (7) days after the consolidated initial appearance and arraignment under Rule 19.04, subd. 5, but that rule also permits the court to extend that time for good cause.*~~

~~*On or before the date of the arraignment the prosecuting attorney shall give the Rasmussen notice required by Rule 19.04, subd. 6(1). (See Rule 7.01 and Comments to Rule 7.01).*~~

~~*Rule 19.04, subd. 6(3), which establishes the notice requirements for a prosecuting attorney seeking an aggravated sentence in proceedings prosecuted by indictment, parallels Rule 7.03, which establishes those requirements for proceedings prosecuted by complaint. See the comments to that other rule. Also see Rule 1.04(d), which defines "aggravated sentence," and the comments to that rule.*~~

~~*Upon the date fixed for arraignment, the defendant shall be arraigned as provided by Rule 13. If the defendant does not plead guilty, a date shall be fixed for the Omnibus Hearing under Rule 11, which shall be held not more than 7 days from the date of the arraignment unless extended for good cause. (Rule 19.04, subd. 4 and subd. 5).*~~

~~*Between defendant's first appearance in the district court and the Omnibus Hearing, the prosecution and defendant shall complete the discovery procedures required by Rules 9.01,*~~

~~*subd. 1; 9.02, subd. 1 (Rule 19.04, subd. 7).*~~ *The parties* ~~*shall*~~*must serve their motions under Rule 10 at least 3 days before the Omnibus Hearing (Rule* ~~*10.04*~~*10.03) (including motions to suppress based on the Rasmussen notice given under Rule 19.04, subd. 6*~~*(1)*~~*). (See also comments to Rule 11.03.)* ~~*At or before the Omnibus Hearing the prosecution shall give the Spreigl notice required by Rule 19.04, subd. 6(4). (See Rule 7.02 and comments to Rule 7.02.)*~~ *The Omnibus Hearing must*~~*shall be held in the district court in accordance with the provisions of Rule 11. (See comments to Rule 11.) If at the Omnibus Hearing the defendant wishes to challenge the sufficiency of the evidence heard by the grand jury to support the indictment, Rules 17.06, subd. 2(1)(a) and 18.05, subds. 1 and 2 govern that challenge.* ~~*is governed by Rule 17.06, subd. 2(1)(a) and Rule 18.06, subds. 1 and 2.*~~ *The provision in Rule 11.03 concerning a motion that* ~~*there is*~~ *an insufficient showing of probable cause has been made applies only to complaints and not to indictments.* ~~*By Rule 19.06 a verbatim record shall be made of the defendant's first appearance before the district court, the arraignment, and the Omnibus Hearing.*~~	

Proposed Revisions to Minn. R. Crim. P. 20

Original Language Showing Markup	Proposed Revised Language
Rule 20. ~~Proceedings For~~ Mentally Ill or Mentally Deficient Defendants.	**Rule 20. Mentally Ill or Mentally Deficient Defendants.**
Rule 20.01 Competency Proceedings.~~to Proceed~~	**Rule 20.01 Competency Proceedings**
Subd. 1. Waiver of Counsel in Competency ~~to~~ Proceedings ~~Defined~~. A defendant ~~shall~~ must not be ~~permitted~~ allowed to waive counsel ~~who~~if the defendant lacks ~~sufficient~~ ability to: (a) knowingly, voluntarily, and intelligently waive the ~~constitutional~~ right to counsel~~,~~; (b) ~~to~~ appreciate the consequences of ~~the decision to~~ proceeding without ~~representation by~~ counsel~~,~~; (c) ~~to~~ comprehend the nature of the charge; (d) comprehend the nature of the ~~and~~ proceedings~~,~~; (e) ~~the range of applicable~~comprehend the possible punishment~~s,~~; or (f) ~~and~~comprehend any ~~additional~~other matters essential to ~~a general~~ understanding ~~of~~ the case. The court ~~may~~must not proceed under this rule before a lawyer consults with the defendant and ~~the lawyer~~ has an opportunity to be heard ~~by the court~~.	Subd. 1. Waiver of Counsel in Competency Proceedings. A defendant must not be allowed to waive counsel if the defendant lacks ability to: (a) knowingly, voluntarily, and intelligently waive the right to counsel; (b) appreciate the consequences of proceeding without counsel; (c) comprehend the nature of the charge; (d) comprehend the nature of the proceedings; (e) comprehend the possible punishment; or (f) comprehend any other matters essential to understanding the case. The court must not proceed under this rule before a lawyer consults with the defendant and has an opportunity to be heard.
Subd. 2. Competency to Participate in the Proceedings. A defendant is incompetent and ~~shall~~must not ~~be permitted to enter a~~ plead, ~~or~~ be tried, or be sentenced ~~for any offense~~ if the defendant lacks ~~the~~ ability to: (~~1~~a) ~~lacks sufficient ability to~~rationally consult with ~~a reasonable degree of rational understanding with defense~~ counsel; or (~~2~~b) ~~is mentally ill or mentally deficient so as to be incapable of~~ understand~~ing~~ the proceedings or ~~participating~~participate in the defense due to mental illness or deficiency.	Subd. 2. Competency to Participate in the Proceedings. A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense due to mental illness or deficiency.
Subd. ~~2~~3. ~~Proceedings~~Competency Motion. If ~~during the pending proceedings,~~ the ~~prosecuting attorney~~prosecutor, defense counsel, or the court, at any time, ~~has reason to~~ doubts the defendant's competency ~~of the defendant~~, ~~then~~ the ~~prosecuting~~	Subd. 3. Competency Motion. If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its

~~attorney~~prosecutor or defense counsel ~~by~~must make a motion challenging competency, or the court on its initiative ~~shall~~must raise ~~that~~the issue. ~~Any such motion may be brought over the objection of the~~The defendant's consent is not required. The motion ~~shall~~must ~~set forth the~~provide supporting facts, ~~constituting the basis for the motion,~~ but ~~defense counsel shall~~must not ~~divulge~~include communications between the defendant and defense counsel if disclosure would violate ~~in violation of~~ the attorney-client privilege. ~~The~~By bringing ~~of~~ the motion, ~~by~~ defense counsel does not waive the attorney-client privilege. If the court ~~in which a criminal case is pending~~ determines ~~upon motion of the prosecuting attorney or defense counsel or upon initiative of the court~~ that ~~there is~~ reason exists to doubt the defendant's competency, ~~as defined by this rule,~~ the court ~~shall~~must suspend the criminal proceedings and ~~shall~~ proceed as follows~~:~~.	initiative must raise the issue. The defendant's consent is not required. The motion must provide supporting facts, but must not include communications between the defendant and defense counsel if disclosure would violate the attorney-client privilege. By bringing the motion, defense counsel does not waive the attorney-client privilege. If the court determines that reason exists to doubt the defendant's competency, the court must suspend the criminal proceedings and proceed as follows.
(~~1~~a) ~~Misdemeanors.~~In misdemeanor cases, the court must: (1) ~~If the charge is a misdemeanor, the court having trial jurisdiction shall either~~ proceed ~~according to~~under this rule as in felony or gross misdemeanor cases~~.~~; (2) ~~or cause~~begin civil commitment proceedings ~~to be instituted against the defendant,~~; or (3) ~~unless contrary to the public interest,~~ dismiss the case, unless dismissal would be contrary to the public interest.	(a) In misdemeanor cases, the court must: (1) proceed under this rule as in felony or gross misdemeanor cases; (2) begin civil commitment proceedings; or (3) dismiss the case, unless dismissal would be contrary to the public interest.
(~~2~~b) ~~Probable Cause Felony or Gross Misdemeanor.~~ In ~~the case of a~~ felony or gross misdemeanor cases, ~~unless the issue of probable cause has previously been determined,~~ the ~~district~~ court must, ~~upon~~on motion, ~~before proceeding further shall~~ determine ~~whether there is sufficient~~ probable cause ~~stated on the face of the complaint~~. If probable cause exists, the court must order an examination of the defendant's mental condition. If ~~the court determines that the complaint does not state sufficient~~no probable cause exists, ~~to believe the defendant committed the offense charged,~~ the charges ~~against the defendant shall~~must be dismissed.	(b) In felony or gross misdemeanor cases, the court must, on motion, determine probable cause. If probable cause exists, the court must order an examination of the defendant's mental condition. If no probable cause exists, the charges must be dismissed.
~~(3)~~Subd. 4. ~~Medical~~ Examination and Report. (a) Medical Examination. The court ~~shall~~	Subd. 4. Examination and Report. (a) Medical Examination. The court must

must appoint at least one examiner as defined in ~~the Minnesota Commitment Act of 1982,~~ Minn.~~esota~~ Stat.~~utes, chapter~~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~~and the examination ~~may not be ordered if the examination~~ can be done ~~adequately~~ on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the ~~outpatient~~ examination a condition of ~~the defendant's~~ release. If the defendant is not entitled to release or 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~~ up to 60 days to complete the examination.

If the ~~defendant or prosecution~~ prosecutor or defense counsel has ~~retained~~ a qualified ~~psychiatrist or clinical psychologist or physician experienced in the field of mental illness~~examiner, the court, on request, ~~of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted~~must allow the examiner to observe the examination and ~~to also~~ examine the defendant. ~~Both the examiner appointed by the court and any~~ 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~~must order that if any ~~of the mental health professionals~~ examiner 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~~examiner must promptly notify the ~~prosecuting attorney~~prosecutor, defense counsel, and the court.

(~~4~~b) Report of Examination. ~~At the conclusion of the examination,~~The court-appointed examiner must forward a written report ~~of the examination shall be forwarded~~ to the judge who ordered the examination~~,~~. ~~and the judge shall cause~~

appoint at least one examiner as defined in Minn. Stat. ch. 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition.

If the defendant is entitled to release, and the examination can be done on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the examination a condition of release. If the defendant is not entitled to release or the examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. Any examiner may obtain and review the report of any prior examination under this rule.

The court must order that if any examiner appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention, the examiner must promptly notify the prosecutor, defense counsel, and the court.

(b) Report of Examination. The court-appointed examiner must forward a written report to the judge who ordered the examination. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report

~~copies~~The court must promptly provide a copy of the report to the prosecutor and ~~be delivered forthwith to the prosecuting attorney and to~~ defense counsel. The ~~contents of the~~ report ~~shall~~must not be otherwise disclosed until the competency hearing ~~on the defendant's competency~~. The report ~~of the examination shall~~must include ~~without limitation~~:	must not be otherwise disclosed until the competency hearing. The report must include:
(1) A diagnosis of the defendant's mental condition ~~of the defendant~~.	(1) A diagnosis of the defendant's mental condition.
(2) If the defendant is mentally ill or ~~mentally~~ deficient, an opinion as to:	(2) If the defendant is mentally ill or deficient, an opinion as to:
(a) the defendant's capacity to understand the ~~criminal~~ proceedings ~~and to~~or participate in the defense;	(a) the defendant's capacity to understand the proceedings or participate in the defense;
(b) whether the defendant presents an imminent risk of serious danger to another ~~person~~, is imminently suicidal, or otherwise needs emergency intervention;	(b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;
(c) ~~the~~ any treatment required~~, if any,~~ for the defendant to attain or maintain competence ~~with~~and an explanation of ~~the~~ appropriate treatment alternatives by order of ~~choice~~preference~~,~~, including the extent to which the defendant can be treated without ~~being committed~~commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended; ~~and~~	(c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;
(d) whether ~~there is~~ a substantial probability exists that ~~with treatment or otherwise~~ the defendant will ever attain ~~the~~ competency to proceed;	(d) whether a substantial probability exists that the defendant will ever attain competency to proceed;
(e) the estimated time required to attain competency to proceed; and	(e) the estimated time required to attain competency to proceed; and
(f) ~~to proceed, and if so, in approximately what period of time, and the availability of the various types of~~ the availability of acceptable treatment ~~in the local~~programs in the geographic~~al~~ area~~, specifying the agencies or settings in which the~~ including the provider and type of treatment ~~might be obtained and whether it would be available to an outpatient~~.	(f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.
(3) ~~A statement of the~~The factual basis ~~upon which the diagnosis and opinion are based~~for the diagnosis and opinions.	(3) The factual basis for the diagnosis and opinions.
(4) If the examination could not be conducted ~~by reason of~~because of the defendant's unwillingness to participate ~~therein~~, ~~a statement to that effect with~~ an opinion, if possible, as to whether the defendant's unwillingness ~~was the~~ resulted ~~of~~from mental illness or deficiency.	(4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or deficiency.

Subd. ~~3~~5. Competency ~~Hearing and~~ Determination ~~of Competency~~.	Subd. 5. Competency Determination.
(~~1~~a) Request for Hearing. ~~If~~The court must hold a hearing if ~~either~~a party files written objections to the competency report within ten (10) days after ~~the~~ receipt ~~of a copy thereof, the court, upon notice to the parties, shall hold a hearing on the issue of the defendant's competency to proceed~~.	(a) Request for Hearing. The court must hold a hearing if a party files written objections to the competency report within ten (10) days after receipt.
(~~2~~b) ~~Going Forward with Evidence~~Hearing Process. ~~If the defense moved for the examination, the defense shall go forward first with~~ The party that requested the competency hearing must present evidence first ~~at the hearing~~. If the ~~examination was on motion of the prosecuting attorney or on the initiative of the~~ court requested the competency report, the ~~prosecuting attorney shall~~prosecutor must present ~~go forward first with~~ evidence first unless the court otherwise ~~directs~~orders.	(b) Hearing Process. The party that requested the competency hearing must present evidence first. If the court requested the competency report, the prosecutor must present evidence first unless the court otherwise orders.
(~~3~~c) ~~Report and~~ Evidence. ~~At the hearing, evidence~~Evidence ~~as to~~of the defendant's mental condition may be admitted, including the court-appointed examiner's report ~~of the person who examined the defendant at the direction of the court~~. The court-appointed examiner ~~person who prepared the report~~ or any ~~individual~~person designated by ~~that person~~the examiner as a source of information for preparation of the report~~,~~ other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined ~~as such~~ by ~~either~~any party.	(c) Evidence. Evidence of the defendant's mental condition may be admitted, including the court-appointed examiner's report. The court-appointed examiner or any person designated by the examiner as a source of information for preparation of the report other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined by any party.
(~~4~~d) Defense Counsel as Witness. ~~To the extent that doing so does not divulge communications in violation of~~Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the attorney-client privilege~~, defense counsel may relate to the court, subject to examination by the prosecuting attorney, personal observations of and conversations with the defendant~~. ~~Those disclosures do~~Testifying does not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel ~~concerning~~regarding the attorney-client relationship and the defendant's ability to communicate ~~effectively~~ with ~~defense~~ counsel.	(d) Defense Counsel as Witness. Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the attorney-client privilege. Testifying does not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel regarding the attorney-client relationship and the defendant's ability to communicate with counsel. The court must not require counsel to divulge communications protected by the attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning responses to the court's inquiry.

~~However, the~~The court ~~may~~must not require ~~defense~~ counsel to divulge communications ~~in violation of~~protected by the attorney-client privilege, and the~~. The prosecuting attorney~~prosecutor can~~may~~ not cross-examine defense counsel ~~responding~~concerning responses to the court's inquiry.	
(~~5~~e) Determination Without Hearing. If ~~neither the prosecution nor the defense files written~~ no party timely filed objections and the court did not hold a competency hearing, ~~to the report within the ten-day period, the court without a hearing may determine~~ the court may determine the defendant's competency ~~to proceed upon the basis of~~on the examiner's report.	(e) Determination Without Hearing. If no party timely filed objections and the court did not hold a competency hearing, the court may determine the defendant's competency on the examiner's report.
(~~6~~f) ~~Decision and Sufficiency of Evidence~~Burden of Proof and Decision. If ~~upon consideration of the report and the evidence received at any hearing,~~ the court finds by the greater weight of the evidence that the defendant is competent, ~~the court shall~~it must enter an order finding ~~that~~ the defendant ~~is~~ competent. Otherwise, the court ~~shall~~must enter an order finding ~~that~~ the defendant ~~is~~ incompetent.	(f) Burden of Proof and Decision. If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.
Subd. ~~4~~6. ~~Effect of Finding on Issue of~~Procedure After Competency ~~to~~ Proceedings.	Subd. 6. Procedure After Competency Proceedings.
(~~1~~a) Finding of Competency. If the court ~~determines that~~finds the defendant ~~is~~ competent ~~to proceed~~, the criminal proceedings ~~against the defendant shall be~~must resume~~d~~.	(a) Finding of Competency. If the court finds the defendant competent, the criminal proceedings must resume.
(~~2~~b) Finding of Incompetency. If the ~~charge against the defendant is a misdemeanor and the court determines that the~~ court finds the defendant ~~is~~ incompetent, ~~to proceed~~and the charge is a misdemeanor, the charge ~~shall~~must be dismissed. If ~~the charge against the defendant is a gross misdemeanor or felony and the court determines that~~ the court finds the defendant ~~is~~ incompetent, ~~to proceed~~and the charge is a felony or gross misdemeanor, the ~~criminal~~ proceedings ~~against the defendant shall~~must be ~~further~~ suspended except as provided ~~by~~in Rule 20.01, subd. ~~6~~8.	(b) Finding of Incompetency. If the court finds the defendant incompetent, and the charge is a misdemeanor, the charge must be dismissed. If the court finds the defendant incompetent, and the charge is a felony or gross misdemeanor, the proceedings must be suspended except as provided in Rule 20.01, subd. 8.
(~~1~~a) Finding of Mental Illness. If the court ~~determines that~~finds the defendant ~~is~~ mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and the	(1) Finding of Mental Illness. If the court finds the defendant mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and the

defendant is under civil commitment as mentally ill, the court ~~shall~~must order ~~that~~ the commitment ~~be~~ to continue~~d,. and if~~If the defendant is not under commitment, the court ~~shall cause~~must commence a civil commitment proceeding~~s to be instituted against the defendant~~. The ~~commitment or continuing commitment shall be subject to the supervision of the trial court as by~~court must supervise the commitment as provided in Rule 20.01, subd. ~~5~~7.	defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under commitment, the court must commence a civil commitment proceeding. The court must supervise the commitment as provided in Rule 20.01, subd. 7.
(2~~b~~) Finding of Mental Deficiency. If the court finds the defendant ~~to be~~ mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court ~~shall~~must order the defendant remanded to the care and custody of the commissioner. ~~, and i~~If the defendant is not under commitment, the court ~~shall~~must cause civil commitment proceedings to be instituted against the defendant. The ~~commitment or continuing commitment shall be subject to the supervision of the trial court as by~~court must supervise the commitment as provided in Rule 20.01, subd. ~~5~~7.	(2) Finding of Mental Deficiency. If the court finds the defendant mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under commitment, the court must cause civil commitment proceedings to be instituted against the defendant. The court must supervise the commitment as provided in Rule 20.01, subd. 7.
(~~c~~3) Appeal. ~~Either~~Any party ~~shall have the right of~~may appeal a civil commitment determination to the Court of Appeals~~ from a determination of the probate court upon the civil commitment proceedings~~. The appeal ~~shall~~must be under Rule 28 and on the record ~~only pursuant to Rule 28~~made in the court. ~~In~~A verbatim record must be made in all civil commitment proceedings instituted under this rule~~, a verbatim record of the proceedings shall be made~~.	(3) Appeal. Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in the court. A verbatim record must be made in all civil commitment proceedings instituted under this rule.
Subd. ~~5~~7. Continuing Supervision ~~by the Court in Felony and Gross Misdemeanor Cases~~. The head of the institution to which the defendant is committed ~~under civil commitment proceedings~~, or if the defendant is not committed to an institution, the ~~officer or other~~ person charged with the defendant's supervision, ~~or to whom the defendant has been committed, shall~~must report to the court periodically, ~~to the trial court, at such times as the court shall provide, on the defendant's mental condition with an opinion as to the defendant's competency to proceed. The reports shall be made~~and not less than once every six months,	Subd. 7. Continuing Supervision. The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, the person charged with the defendant's supervision, must report to the court periodically, not less than once every six months, on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. Reports must be furnished to the prosecutor and defense counsel. The prosecutor, defense counsel, the defendant, or the person charged with the defendant's

~~unless otherwise ordered~~on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. ~~Copies of the reports shall~~Reports must be furnished to the ~~prosecuting attorney~~prosecutor and ~~to~~ defense counsel.	supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. If the court finds the defendant competent to proceed, the criminal proceedings must resume. The court and the prosecutor must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.
~~When the~~The ~~court on application of the prosecuting attorney~~prosecutor, defense counsel, the defendant, or the person ~~having supervision over~~charged with the defendant's supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. ~~, or on the court's initiative, determines, after a hearing with notice to the parties, that~~If the court finds the defendant ~~is~~ competent to proceed, the criminal proceedings ~~against the defendant shall be resumed~~must resume. ~~Unless the criminal charges against the defendant have been dismissed as provided by Rule 20.01, subd. 6, the trial~~ The court and the prosecutor ~~court and the prosecuting attorney shall~~ must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The ~~prosecuting attorney~~prosecutor ~~shall have~~has the right to participate as a party in any proceedings concerning ~~such~~ proposed changes in the defendant's civil commitment or status.	
Subd. ~~6~~8. Dismissal of~~of~~ Criminal Charge~~Proceedings~~.	Subd. 8. Dismissal of Criminal Charge.
(1) Felonies. Except when the defendant is charged with murder, the criminal ~~proceedings~~charges ~~shall~~must be dismissed ~~upon the expiration of~~ three years ~~from~~after the date of ~~the~~ finding ~~of~~ the defendant~~'s~~ incompeten~~cy~~ to proceed to proceed unless the ~~prosecuting attorney~~prosecutor, before the expiration of the three-year period, files a written notice of ~~intention~~intent to prosecute ~~the defendant~~ when the defendant ~~has been restored to~~regains competency.	(1) Felonies. Except when the defendant is charged with murder, the criminal charges must be dismissed three years after the date of finding the defendant incompetent to proceed unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant regains competency.
(2) Gross Misdemeanors. The criminal ~~proceedings shall~~charges must be dismissed 30 days after the date of ~~the~~ finding ~~of~~ the defendant~~'s~~ incompeten~~cy~~ to proceed unless ~~by~~before that date the ~~prosecuting attorney~~prosecutor files a written notice of intent~~ion~~ to prosecute ~~the defendant~~ when the defendant ~~has been restored to~~regains	(2) Gross Misdemeanors. The criminal charges must be dismissed 30 days after the date of finding the defendant incompetent to proceed unless before that date the prosecutor files a written notice of intent to prosecute when the defendant regains competency. If a notice has been filed, the charges must be dismissed when the defendant

competency. If ~~such~~ a notice has been filed, the ~~criminal proceedings shall~~charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted ~~in the criminal proceedings~~.	would be entitled under these rules to custody credit of at least one year if convicted.
Subd. ~~7~~9. ~~Determination of Legal~~ Issues Not Requiring Defendant's Participation. The ~~fact that the~~ defendant's ~~is incompetent to proceed shall~~incompetence does not preclude defense counsel from making ~~any legal~~an objection or defense ~~which is susceptible of fair determination~~ before trial that can be fairly determined without the ~~personal~~ defendant's participation ~~of the defendant~~.	Subd. 9. Issues Not Requiring Defendant's Participation. The defendant's incompetence does not preclude defense counsel from making an objection or defense before trial that can be fairly determined without the defendant's participation.
Subd. ~~8~~10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination ~~shall be~~ is admissible ~~in evidence~~ at the competency proceeding~~s to determine whether the defendant is competent to proceed~~.	Subd. 10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible at the competency proceeding.
Subd. ~~9~~11. Credit for ~~Time Spent in~~ Confinement. If ~~the court orders criminal proceedings resumed on a finding that defendant is competent to proceed, and~~ the defendant is convicted ~~of the charge~~, ~~the~~ any time ~~the defendant has~~ spent confined to a hospital or other facility for a mental examination under this rule ~~shall~~must be credited ~~upon any jail or prison sentence imposed~~as time served.	Subd. 11. Credit for Confinement. If the defendant is convicted, any time spent confined to a hospital or other facility for a mental examination under this rule must be credited as time served.
Rule 20.02 ~~Medical Examination of Defendant Upon~~ Defense of Mental Illness or Deficiency—~~or~~ Mental ~~Illness~~Examination	**Rule 20.02 Defense of Mental Illness or Deficiency—Mental Examination**
Subd. 1. Authority ~~of Court~~ to Order Examination. The trial court ~~having trial jurisdiction over the offense charged~~ may order ~~a~~the defendant's mental examination ~~of the defendant when~~if: (a) the defense ~~has notified~~notifies the ~~prosecuting attorney~~prosecutor ~~pursuant to Rule 9.02, subd. 1(3)(a)~~ of ~~an intention~~its intent to assert a ~~defense of~~ mental illness or deficiency defense pursuant to Rule 9.02, subd. 1(5)~~,~~; (b) ~~when~~ the defendant in a misdemeanor case pleads not guilty by reason of mental illness or	Subd. 1. Authority to Order Examination. The trial court may order the defendant's mental examination if: (a) the defense notifies the prosecutor of its intent to assert a mental illness or deficiency defense pursuant to Rule 9.02, subd. 1(5); (b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or deficiency;

~~mental~~ deficiency~~,~~; or (c) ~~when at the trial of the case,~~ the defendant offers evidence of ~~such~~ mental ~~condition~~illness or deficiency at trial.	or (c) the defendant offers evidence of mental illness or deficiency at trial.
Subd. 2. ~~Examination of the~~ Defendant's Examination. If the court orders a mental examination of the defendant, it ~~shall~~must appoint at least one examiner as defined in ~~the Minnesota Commitment Act of 1982,~~ Minn. Stat. c~~C~~h. 253B, or successor statute, to examine the defendant and report to the court ~~u~~pon the defendant's mental condition. ~~For the purpose of the examination, the court, upon a special showing of need therefor,~~The court may order the defendant to be confined to a hospital or other ~~suitable~~ facility for ~~a specified period not to exceed~~ up to 60 days to complete the examination if special need is shown. If ~~the defendant or prosecution~~ any party has retained an examiner, ~~as defined in the Minnesota Commitment Act of 1982, Minn. Stat. Ch. 253B, or successor statute, the court on request of the defendant or prosecuting attorney shall direct that such~~the examiner must be permitted to observe the mental examination and ~~to conduct a mental examination of~~examine the defendant ~~also~~.	Subd. 2. Defendant's Examination. If the court orders a mental examination of the defendant, it must appoint at least one examiner as defined in Minn. Stat. ch. 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition. The court may order the defendant to be confined to a hospital or other facility for up to 60 days to complete the examination if special need is shown. If any party has retained an examiner, the examiner must be permitted to observe the mental examination and examine the defendant.
Subd. 3. ~~Refusal of~~ Defendant's Refusal to be Examined. If the defendant does not participate in the examination ~~so that the examiner is unable to make~~and thereby prevents the examiner from making an adequate report to the court, the court may: (a) prohibit the defendant from introducing evidence of the defendant's mental condition~~,~~; (b) ~~may~~ strike any ~~such evidence~~ previously introduced evidence of the defendant's mental condition~~,~~; (c) ~~may~~ permit any ~~other~~ party to introduce evidence of the defendant's refusal to cooperate and to comment ~~thereon~~on it to the trier of ~~the~~ fact~~s~~; (d) ~~and may~~ make any ~~such~~ other ruling as it deems just.	Subd. 3. Defendant's Refusal to be Examined. If the defendant does not participate in the examination and thereby prevents the examiner from making an adequate report to the court, the court may: (a) prohibit the defendant from introducing evidence of the defendant's mental condition; (b) strike any previously introduced evidence of the defendant's mental condition; (c) permit any party to introduce evidence of the defendant's refusal to cooperate and to comment on it to the trier of fact; (d) make any other ruling as it deems just.
Subd. 4. Report of Examination. ~~At the conclusion of the examination,~~The examiner must forward a written examination report ~~of the examination shall be forwarded~~ to the ~~judge who ordered the examination, and the~~ court. ~~shall cause~~The court must provide copies of the report ~~to~~	Subd. 4. Report of Examination. The examiner must forward a written examination report to the court. The court must provide copies of the report to the prosecutor and defense. The contents of the report must not otherwise be disclosed except as provided in this rule. The

~~be delivered forthwith~~ to the ~~prosecuting attorney,~~prosecutor and ~~to~~ defense ~~counsel~~. The contents of the report ~~shall~~must not otherwise be disclosed except as ~~hereafter~~ provided ~~by~~ in this rule. The report ~~of the examination shall~~must contain:	report must contain:
(~~1~~a) A diagnosis of the defendant's mental condition as requested by the court;	(a) A diagnosis of the defendant's mental condition as requested by the court;
(~~2~~b) If ~~so~~ directed by the court, an opinion as to whether, because of mental illness or deficiency, the defendant, at the time of ~~the commission of~~committing the ~~offense charged~~alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act~~, constituting the offense with which defendant is charged~~ or that it was wrong;	(b) If directed by the court, an opinion as to whether, because of mental illness or deficiency, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong;
(~~3~~c) Any opinion requested by the court that is based on the examiner's diagnosis;	(c) Any opinion requested by the court that is based on the examiner's diagnosis;
(~~4~~d) A statement of the factual basis ~~up~~on which the diagnosis and any opinion are based~~.~~; and	(d) A statement of the factual basis on which the diagnosis and any opinion are based; and
(e) If the examination ~~cannot~~ could not be conducted ~~by reason~~ because of the defendant's unwillingness to participate, ~~the report shall so state and shall include, if possible,~~ an opinion, if possible, as to whether the defendant's unwillingness ~~of the defendant was the~~ resulted ~~of~~from mental illness or deficiency.	(e) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the defendant's unwillingness resulted from mental illness or deficiency.
Subd. 5. Admissibility of ~~Evidence at Trial~~Examination. ~~No evidence~~Evidence derived from the examination ~~shall be received~~is not admissible against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If the defendant's mental condition is an issue, any party may call the ~~person who examined the defendant at the direction of the~~ court-appointed examiner to testify as a witness at ~~the~~ trial, and ~~that person shall be~~the examiner is subject to cross-examination by any other party. The report or portions ~~thereof~~of it may be received in evidence to impeach the ~~testimony of the person making it~~examiner.	Subd. 5. Admissibility of Examination. Evidence derived from the examination is not admissible against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If the defendant's mental condition is an issue, any party may call the court-appointed examiner to testify as a witness at trial, and the examiner is subject to cross-examination by any other party. The report or portions of it may be received in evidence to impeach the examiner.
Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, ~~or~~ Rule 20.02, or both, the admissibility at trial of any statements ~~made by~~ the defendant made for the purpose~~s~~ of the examination and any evidence ~~obtained as a result~~	Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, Rule 20.02, or both, the admissibility at trial of any statements the defendant made for the purpose of the examination and any evidence derived from the statements must be determined by

~~of such~~derived from the statements ~~shall~~must be determined by the following rules~~:~~.

(1) ~~Notice by Defendant of~~ Sole Defense of Mental Condition. If a defendant notifies the ~~prosecuting attorney~~prosecutor under Rule 9.02, subd. 1(~~3~~5)~~(a),~~ of ~~an~~ intent~~ion~~ to rely solely on the defense of mental illness or deficiency, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or ~~mental~~ deficiency ~~pursuant to~~under Rule 14.01(c), statements ~~made by~~ the defendant made for the purpose of the mental examination and evidence ~~obtained as a result of~~derived from the statements ~~shall be~~are admissible at the trial ~~up~~on ~~that~~ the issue of the defendant's mental condition.

(2) Multiple Defenses. If a defendant relies on the defense of mental illness or deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency, the statements the defendant made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or deficiency stage of the trial.

Subd, 7. Trial Procedure for Multiple Defenses.

(~~2~~a) ~~Separate Trial of Defenses~~Order of Proof. If a defendant notifies the ~~prosecuting attorney~~prosecutor under Rule 9.02, subd. 1(~~3~~5)~~(a),~~ of ~~an~~ intent~~ion~~ to rely on the defense of mental illness or ~~mental~~ deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or ~~mental~~ deficiency, ~~there shall~~the court must ~~be a separation of~~separate the two defenses. ~~with a sequential order of proof before the court or jury in a continuous trial in which the~~The defense of not guilty ~~shall~~must be heard and determined first~~.~~. ~~and then the~~The defense of ~~the defendant's~~ mental illness or deficiency must be heard and determined second.

~~(3) Effect of Separate Trial. If the defendant relies on the two defenses, the statements made by the defendant for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the defendant only at that stage of the trial relating to the defense of mental illness or mental deficiency.~~

the following rules.

(1) Sole Defense of Mental Condition. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely solely on the defense of mental illness or deficiency, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or deficiency under Rule 14.01(c), statements the defendant made for the purpose of the mental examination and evidence derived from the statements are admissible at the trial on the issue of the defendant's mental condition.

(2) Multiple Defenses. If a defendant relies on the defense of mental illness or deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency, the statements the defendant made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or deficiency stage of the trial.

Subd, 7. Trial Procedure for Multiple Defenses.

(a) Order of Proof. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely on the defense of mental illness or deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency, the court must separate the two defenses. The defense of not guilty must be heard and determined first. The defense of mental illness or deficiency must be heard and determined second.

~~(4) Procedure Upon Separated Trial of Defenses.~~

(~~a~~b) Jury Instructions ~~to Jury~~. ~~When the two defenses are separated for trial under this rule, the~~ The jury ~~shall~~must be informed at the ~~commencement~~start of the trial that:

(1) the defendant has offered two defenses ~~have been interposed~~;

(2) ~~that~~ the defense of not guilty will be tried first and ~~then~~ the defense of mental illness or ~~mental~~ deficiency will be tried second;

(3) ~~that~~ if the jury finds that the elements of the offense ~~charged~~ have not been proved, the defendant will be acquitted;

(4) ~~that~~ if the jury finds the elements of the offense have been proved~~,~~ then the defense of mental illness or deficiency will ~~then~~ be tried and determined by the jury.

(~~b~~c) Proof of Elements ~~of Offense~~—Effect. ~~Upon the trial of the defense of not guilty the jury, or the court, if a jury is waived, shall determine whether~~The court or jury must determine whether the elements of the offense ~~charged~~ have been proved beyond a reasonable doubt. If the ~~court or jury determines that the~~ elements of the offense have not been ~~so~~ proved ~~beyond a reasonable doubt~~, a judgment of acquittal ~~shall~~must be entered.

If the ~~court or jury determines that the elements of the offense have been proved beyond a reasonable doubt~~defendant has been convicted in the guilt phase, then the defense of mental illness or ~~mental~~ deficiency ~~shall~~must ~~then~~ be tried~~. and determined by the jury, or by the court, if a jury is waived, and based upon that determination the~~ The jury ~~or court shall~~must render a verdict or the court make a finding of:

(1) ~~of~~ not guilty by reason of mental illness;

~~or~~ (2) ~~of~~ not guilty by reason of mental deficiency; or

(3) ~~of~~ guilty.

~~The court shall enter judgment accordingly.~~ The defendant ~~shall have~~bears the burden of proving ~~the defense of~~ mental illness or ~~mental~~ deficiency by a preponderance of the evidence.

~~Subd. 7. Simultaneous Examinations. The court may order that the examination for competency to proceed under Rule 20.01, an examination for civil commitment as mentally ill or mentally deficient under the Minnesota~~

(b) Jury Instructions. The jury must be informed at the start of the trial that:

(1) the defendant has offered two defenses;

(2) the defense of not guilty will be tried first and the defense of mental illness or deficiency will be tried second;

(3) if the jury finds that the elements of the offense have not been proved, the defendant will be acquitted;

(4) if the jury finds the elements of the offense have been proved then the defense of mental illness or deficiency will be tried and determined by the jury.

(c) Proof of Elements—Effect. The court or jury must determine whether the elements of the offense have been proved beyond a reasonable doubt. If the elements of the offense have not been proved, a judgment of acquittal must be entered.

If the defendant has been convicted in the guilt phase, then the defense of mental illness or deficiency must be tried. The jury must render a verdict or the court make a finding of:

(1) not guilty by reason of mental illness;

(2) not guilty by reason of mental deficiency; or

(3) guilty.

The defendant bears the burden of proving mental illness or deficiency by a preponderance of the evidence.

~~Commitment Act of 1982, Minn. Stat. Ch. 253B, or successor statute, and the examination authorized by Rule 20.02 be conducted simultaneously.~~

Subd. 8. ~~Legal~~ Effect of ~~Finding of~~ Not Guilty by Reason of Mental Illness or Deficiency.

(1) Mental Illness. When a defendant is found not guilty by reason of mental illness, and the defendant is under civil commitment as mentally ill, the court ~~shall~~must order ~~that~~ the commitment to ~~be~~ continue~~d., and if~~ If the defendant is not under commitment, the court ~~shall~~must ~~cause~~commence a civil commitment proceeding~~s to be instituted against the defendant and that~~and order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. ~~The~~In felony and gross misdemeanor cases, the court must supervise the commitment ~~or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court~~ as provided ~~by~~in Rule 20.02, subd. 8(4).

(2) Mental Deficiency. When a defendant is found not guilty by reason of mental deficiency and the defendant is under commitment to the guardianship of the commissioner of public welfare, the court ~~shall~~must order the defendant remanded to the care and custody of the commissioner~~., and if~~ If the defendant is not under such commitment, the court ~~shall cause~~must commence a civil commitment proceeding~~s to be instituted against the defendant~~. In felony and gross misdemeanor cases, ~~The~~the court must supervise the commitment ~~or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court~~ as provided ~~by~~in Rule 20.02, subd. 8(4).

(3) Appeal. ~~Either~~Any party ~~shall have the right to~~may appeal a civil commitment determination to the Court of Appeals ~~from a determination of the court upon the civil commitment proceedings~~. The appeal ~~shall~~must be ~~taken on the record only pursuant to~~under Rule 28 and on the record made in court. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings ~~shall~~must be made.

(4) Continuing Supervision. In felony and gross misdemeanor cases ~~only~~, the ~~trial~~ court and the ~~prosecuting attorney shall~~prosecutor must be

Subd. 8. Effect of Not Guilty by Reason of Mental Illness or Deficiency.

(1) Mental Illness. When a defendant is found not guilty by reason of mental illness, and the defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under commitment, the court must commence a civil commitment proceeding and order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(2) Mental Deficiency. When a defendant is found not guilty by reason of mental deficiency and the defendant is under commitment to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under such commitment, the court must commence a civil commitment proceeding. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(3) Appeal. Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in court. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings must be made.

(4) Continuing Supervision. In felony and gross misdemeanor cases, the court and the prosecutor must be notified of any proposed

notified of any proposed institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The ~~prosecuting attorney~~prosecutor ~~shall have~~has the right to participate as a party in any proceedings concerning ~~such~~ proposed changes in the defendant's civil commitment or status.	institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.
Rule 20.03 Disclosure of Reports and Records of Defendant's Mental Examinations	**Rule 20.03 Disclosure of Reports and Records of Defendant's Mental Examinations**
Subd. 1. ~~Order for~~ Disclosure Order. If a defendant notifies the ~~prosecuting attorney~~prosecutor under Rule 9.02, subd. 1(~~3~~5)~~(a),~~ of an intent~~ion~~ to rely on the defense of mental illness or ~~mental~~ deficiency, the ~~trial~~ court, on the prosecutor's motion ~~of the prosecuting attorney and~~ with notice to defense counsel, may order the defendant to furnish ~~either~~ to the court or to the ~~prosecuting attorney~~prosecutor copies of all medical reports and ~~hospital and medical~~ records previously or subsequently ~~thereafter~~ made concerning the defendant's mental condition ~~of the defendant and~~that are relevant to ~~the issue of~~ the ~~defense of~~ mental illness or ~~mental~~ deficiency defense. ~~If~~ The court must inspect ~~the copies of the~~any reports and records ~~are~~ furnished to ~~the court~~it, ~~the court shall inspect them to determine their relevancy. If the court determines they are~~and if the court finds them relevant, ~~they shall be delivered~~order them disclosed to the ~~prosecuting attorney~~prosecutor. Otherwise, they ~~shall~~must be returned to the defendant. ~~If the defendant is unable to comply with the court order, a~~ A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.	Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or deficiency, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or deficiency defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant. A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.
Subd. 2. Use of Reports and Records. ~~If an order for disclosure of reports~~Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, ~~is entered and copies thereof are furnished to the prosecuting attorney, the reports and records and any evidence obtained therefrom~~ may be admitted in evidence only ~~upon~~on ~~the issue of~~ the defense of mental illness or ~~mental~~ deficiency when ~~that issue~~ it is the sole defense, or during the mental illness or deficiency phase ~~when it is tried as provided~~when	Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or deficiency when it is the sole defense, or during the mental illness or deficiency phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

there are multiple defenses, as specified by Rule 20.02, subd. 7~~6(4)~~.

Rule 20.04. Simultaneous Examinations.

The court may order a civil commitment examination under Minn. Stat. ch. 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

Comment—Rule 20

~~*Rule 20 prescribes the detailed procedures to be followed when it appears that a defendant may be mentally incompetent to stand trial or when the defendant interposes a defense of mental irresponsibility. The rule fills in the omissions in existing procedures (Minn. Stat. §§ 611.026, 631.18, 631.19 (1971)) and attempts to meet the constitutional equal protection and due process requirements established by Jackson v. Indiana, 406 U.S. 715 (1972), McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972), Humphrey v. Cady, 405 U.S. 504 (1972), and Pate v. Robinson, 383 U.S. 375 (1966), which are not fully met by the present statutes. To the extent the statutes are inconsistent with Rule 20, they are superseded by the rule.*~~

~~*Rule 20 in authorizing a compulsory medical examination of the defendant (Rules 20.01, subd. 2(3) and 20.02, subd. 1) also provides procedures for avoiding infringement of the defendant's privilege against self-incrimination (Rule 20.02, subd. 6).*~~

~~*Rule 20.01 details the procedures relating to competency to proceed.*~~

~~*Rule 20.01, subd. 1 with some changes of language adopts the provisions of Minn. Stat. § 611.026 (1971) defining competency to proceed and also includes the additional elements as set forth in Unif.R.Crim.P. 463(b) (1987) and ABA Standards for Criminal Justice 7-4.1(b) (1985). The test for competency to proceed set forth in part (1) of the rule is as required by Dusky v. United States, 362 U.S. 402 (1960). The requirement for counsel consulting with the defendant before proceeding under the rule is from Unif.R.Crim.P.*~~

Rule 20.04. Simultaneous Examinations.

The court may order a civil commitment examination under Minn. Stat. ch. 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

Comment—Rule 20

Rule 20.01, subd. 4(a), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and 20.02. This express authorization, which was adopted in 2005, is intended merely to clarify the rule and not to change it.

No limitation exists for the time or number of hearings that may be held under Rule 20.01 to determine the defendant's competency.

The definitions of mental illness and mental deficiency contained in Minn. Stat. § 611.026 and its judicial interpretations are not affected by these rules.

Rule 20.02, subd. 2, providing for the examination on a defense of mental illness or deficiency, is the same as Rule 20.01, subd. 4(a), governing the examination for competency to proceed.

Rule 20.02, subd. 8, addresses the constitutional requirements of equal protection and due process. No continuing supervision by the trial court exists in misdemeanor cases.

The prosecutor has the right to participate as a party in any civil proceedings being conducted under Minn. Stat. ch. 253B. The prosecutor could question and present witnesses and argue for the continued commitment of the defendant in the civil proceedings.

If the court orders simultaneous examinations under Rule 20.04, the examiner appointed must be qualified to provide a report for all necessary

~~*464(c) (1987) and ABA Standards for Criminal Justice 7-4.4(a)(ii) (1985). The standard set forth in the rule for competency to waive counsel is from Unif.R.Crim.P. 711(a) and (d) (1987) and ABA Standards for Criminal Justice 7-5.3(b) (1985). See Rule 5.02 and the Comments to that rule concerning the appointment of counsel generally.*~~ ~~*If the court before which the case is pending determines there is reason to doubt the defendant's competency and the charge is a felony or gross misdemeanor, the procedures prescribed by Rules 20.01, subd. 2(2) to 20.01, subd. 9 shall be followed.*~~ ~~*If the charge is a misdemeanor, the court has the options of (1) following the procedures prescribed by Rules 20.01, subd. 2(2) to 20.01, subd. 9; (2) causing civil commitment proceedings to be instituted immediately under Minn. Stat. § 253B.07 (1982); or (3) dismissing the case, unless dismissal would be contrary to the public interest (Rule 20.01, subd. 2(1).)*~~ ~~*Under Rule 20.01, subd. 2, the prosecuting attorney, defense counsel and the court all have a duty to raise the issue of the defendant's competency if a reasonable doubt of that exists. This is in accord with Unif.R.Crim.P. 464(a) (1987) and ABA Standards for Criminal Justice 7-4.2(a), (b) and (c) (1985). The prohibition in the rule against defense counsel divulging communications in violation of the attorney-client privilege is from Unif.R.Crim.P. 464(b) (1987) and ABA Standards for Criminal Justice 7-4.2(f) (1985).*~~ ~~*Rule 20.01, subd. 2(2) provides that upon motion, before proceeding further, the district court shall determine whether the complaint sufficiently states probable cause on its face. If the court determines that probable cause is not sufficiently stated, the case shall be dismissed. If it determines that probable cause is sufficiently stated, the criminal proceedings are suspended and the procedures prescribed by Rules 20.01, subd. 2(2) to 20.01, subd. 9 shall be followed.*~~ ~~*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*~~	*purposes.*

~~*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*~~*Rule 20.01, subd. 4(a), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and* ~~*Rule*~~ *20.02. This express authorization, which was adopted 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.

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 Minnesota Statutes, section 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.

Rule 20.01, subd. 3 sets forth the procedure to be followed for determining competency based upon the report alone or together with a hearing if objection is made to the report. The provisions for going forward with the evidence as set forth in Rule 20.01, subd. 3(2) are taken from Unif. R. Crim. P. 466(f) (1987) and ABA Standards for Criminal Justice 7-4.8(c)(i) (1985). Rule 20.01, subd. 3(3) providing for either party to cross-examine the person who prepared the report or that person's sources is taken from Unif. R. Crim. P. 466(d) (1987) and ABA Standards for Criminal Justice 7-4.8(a)(i) and 7-4.8(b) (1985). The provisions in Rule 20.01, subd. 3(4) concerning defense counsel as a witness on competency are taken from Unif.R.Crim.P. 464(e)(1) and (2) (1987) and ABA Standards for Criminal Justice 7-4.8(b)(i) and (ii) (1985). The evidentiary standard set forth in Rule

~~*20.01, subd. 3(6) is taken from Unif.R.Crim.P. 464(g) (1987) and ABA Standards for Criminal Justice 7-4.8(c)(ii) (1985).*~~

~~*If the defendant is found to be competent, the criminal proceedings shall be resumed (Rule 20.01, subd. 4(1)).*~~

~~*If the defendant is found to be incompetent and the charge is a misdemeanor, the case shall be dismissed (Rule 20.01, subd. 4(2)).*~~

~~*If the charge is a felony or gross misdemeanor and the defendant is found to be incompetent, the criminal proceedings shall continue to be suspended (Rule 20.01, subd. 4(2)), and the court shall follow the procedure established by Rules 20.01, subd. 4(2) to 20.01, subd. 6. For gross misdemeanors, the criminal proceedings must be dismissed by the court 30 days after the finding of incompetency unless the prosecuting attorney has filed with the court by that time a written notice of intention to prosecute the defendant on the gross misdemeanor when the defendant is restored to competency. Additionally, even if such a notice is filed, the proceedings must be dismissed later if the defendant becomes entitled to at least one year of custody credit if the defendant were to be convicted of the gross misdemeanor offense. This would include custody credit for time confined in a jail or correctional facility and also for time confined in a hospital or other facility under this rule (see subdivision 9 of this rule).*~~

~~*If the defendant is under civil commitment under Minn. Stat. Ch. 253B (1982), the civil commitment shall be continued (Rule 20.01, subd. 4(2)(a) and (b)). If the defendant is not under civil commitment, commitment proceedings under Minn. Stat. § 253B.07 (1982) in the probate court shall be instituted against the defendant.*~~

~~*At any time, on motion of the interested parties or on the court's initiative, a hearing shall be held to determine the defendant's competency, and if the defendant is found to be competent, the criminal proceedings shall be resumed. (There is no*~~*No limitation* *exists for* ~~*on*~~ *the time or number of* ~~*these*~~ *hearings* *that may be held under*~~*.) (*~~ *Rule 20.01*~~*, subd. 5)*~~ *to determine the defendant's competency*.

~~*The provisions for institution of civil commitment proceedings, for notice and for hearing before the trial court upon the termination of civil commitment and upon the issue of defendant's competency (Rules 20.01, subd. 4(2)(a); 20.01, subd. 4(2)(b); 20.01, subd. 5), and the provision for automatic dismissal of the criminal charges after 3 years (Rule 20.01, subd. 6) are intended to meet the constitutional equal protection and due process requirements established by Jackson v. Indiana, 406 U.S. 715 (1972).*~~

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

~~*During the period of the defendant's incompetency, Rule 20.01, subd. 7 permits the defense attorney to make any legal objection or defense to the prosecution which can be determined without the presence of the defendant. (This could include motions to dismiss the indictment or complaint under Rules 18.02, subd. 2; 17.06) (See Wis.Stat. § 971.14(6)).*~~

~~*By Rule 20.01, subd. 8 statements made by the defendant to the court appointed examiner for the purpose of the examination under Rule 20.01, subd. 2(3) and evidence derived therefrom are admissible at the proceedings to determine the defendant's competency (Rule 20.01, subd. 3). (See ALI Penal Code, § 4.09, Wis.Stat. § 971.18.) (For the admissibility of these statements at trial, see Rule 20.02, subd. 6.)*~~

~~*Rule 20.01, subd. 9 provides for credit for any confinement to a hospital or other facility under Rule 20.01, subd. 2(3).*~~

~~*Rule 20.02 details the procedures to be followed when the defense is not guilty by reason of mental illness or mental deficiency (Rules 14.01; 9.02, subd. 1(3)(a)).*~~

The definition<u>s</u> of mental illness and mental deficiency contained in Minn. Stat. § 611.026

~~(1971)~~ ~~with~~and its judicial interpretations ~~is~~are not affected by these rules. ~~(See State v. Rawland, 294 Minn. 17, 199 N.W.2d 774 (1972)).~~ *~~Rule 20.02 is intended, first, to provide a procedure for compulsory mental examination of the defendant without infringing upon the defendant's constitutional privilege against self-incrimination as to statements made by the defendant for the purpose of the examination, (Rules 20.02, subd. 1 to subd. 7) and, second, to provide procedures following an acquittal by reason of mental illness or mental deficiency that will meet constitutional requirements of equal protection and due process (Rule 20.02, subd. 8). (See Jackson v. Indiana, 406 U.S. 715 (1972), McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972).)~~* *~~By Rule 20.02, subd. 1 an order for compulsory mental examination is triggered by a defense notice under Rule 9.02, subd. 1(3)(a) of an intention to rely on the defense of mental illness or mental deficiency, by the defendant in a misdemeanor case pleading not guilty by reason of mental illness or mental deficiency, or when the defendant offers evidence of mental illness or mental deficiency at trial. Under Rule 9.02, subd. 1(3)(a), in felony and gross misdemeanor cases, a defendant who also intends to rely on the defense of not guilty of the elements of the offense charged must at the same time so notify the prosecution. (See Rule 20.02, subd. 6(2) providing for the trial procedure in the event the defendant gives notice of intention to rely on both the defenses of mental illness or mental deficiency and not guilty.)~~* *~~Rule 20.02, subd. 1 authorizing compulsory mental examination of the defendant changes existing Minnesota law. (State v. Olson, 274 Minn. 225, 143 N.W.2d 69 (1966)) (For similar provisions and cases upholding their constitutionality, see Wis.Stat. § 971.16; Roberts v. State, 41 Wis.2d 537, 164 N.W.2d 525 (1969); State ex rel. LaFollette v. Raskin, 35 Wis.2d 607, 150 N.W.2d 318 (1967).)~~* *Rule 20.02, subd. 2, providing for the examination on a defense of mental illness or deficiency, is the same as Rule 20.01, subd. ~~2(3)~~4(a), governing the examination for*	

competency to proceed. ~~*See the comments on Rule 20.01, subd. 2(3) as to the qualifications of the examiners appointed to examine the defendant. Under Rule 20.02, subd. 7 the two examinations as well as any examination under the civil commitment statutes in Minn. Stat. Ch. 253B may by court order be conducted simultaneously. In the order for the examination under Rule 20.02, subd. 2, the court shall direct what the examination and report shall cover. (See Rule 20.02, subd. 4(1), (2), (3).)*~~

~~*Rule 20.02, subd. 3 leaves the imposition of sanctions for failure of the defendant to participate in the examination to the discretion of the trial court to be determined under all of the circumstances. See Rule 20.02, subd. 4 providing that the examiner's report shall if possible contain an opinion as to whether the defendant's failure to participate was the result of the defendant's mental condition.*~~

~~*Rule 20.02, subd. 4 provides what the report of the examination shall contain. Rule 20.02, subd. 4(2) is worded in the language of Minn. Stat.§ 611.026, but is intended to include the judicial interpretations given to that statute. (See State v. Rawland, 294 Minn. 17, 199 N.W.2d 774 (1972).)*~~

~~*Rule 20.02, subd. 5 provides that evidence derived from the examination is inadmissible except when the defendant has raised the issue of his or her mental condition.*~~

~~*Rule 20.02, subd. 6 is intended to provide a procedure for obviating objections on the grounds of self incrimination to the admissibility at trial of statements made by the defendant for the purpose of the compulsory mental examination under Rules 20.02, subd. 2 and 20.01, subd. 2(3).*~~

~~*If the defendant intends to rely solely on the defense of mental irresponsibility (Rules 9.02, subd. 1(3)(a); 14.01), statements made by the defendant for the purpose of the mental examination and evidence derived from the statements shall be admissible on the trial of that issue, if otherwise admissible under the rules of evidence. (Compare Wis.Stat.§ 971.18).*~~

~~*If, however, the defendant intends to rely on the*~~

~~*defense of mental illness or mental deficiency and the defense of not guilty of the elements of the offense charged (Rules 9.02, subd. 1(3)(a); 14.01), there must be a separation of the two defenses for trial (Rules 20.02, subd. 6(2); 20.02, subd. 6(4)). (See also Wis.Stat. § 971.175; State ex rel. LaFollette v. Raskin, 34 Wis.2d 607, 150 N.W.2d 318 (1967).) The mandatory separation of the two defenses for trial under this rule makes it unnecessary to use the procedures outlined in State v. Hoffman, 328 N.W.2d 709 (Minn.1982).*~~ ~~*If the two defenses are separated for trial, the statements and evidence derived therefrom will be admissible only upon the trial of the defense of mental illness or mental deficiency, if otherwise admissible under the rules of evidence. (Rule 20.02, subd. 6(3).)*~~ ~~*The trial procedure when there is a separation of the two defenses under Rule 20.02, subd. 6(2) is set forth in Rule 20.02, subd. 6(4). (See also Wis.Stat. § 971.175.) The trial shall be continuous before the same jury or judge, with the defense of not guilty of the elements of the offense tried first, and then if necessary, the defense of not guilty by reason of mental illness or mental deficiency.*~~ ~~*The jury shall be informed before commencement of the trial that the two defenses have been interposed and of the trial procedures that will be followed in trying them. (Rule 20.02, subd. 6(4)(a).)*~~ ~~*Upon the trial of the defense of not guilty, the jury or court shall determine whether the elements of the offense have been proved beyond a reasonable doubt (Rule 20.02, subd. 6(4)(b).)*~~ ~~*The form of the determination shall be as follows: (1) "We, the jury, find that the elements of the offense of (name of offense) have been proved beyond a reasonable doubt.", or (2) "We, the jury, find that the elements of the offense of (name of offense) have not been proved beyond a reasonable doubt."*~~ ~~*If it is determined that the elements of the offense have been proved, the trial of the defense of mental illness or mental deficiency shall follow immediately before the same jury or court.*~~	

~~*Upon the trial of the defense of mental irresponsibility, the jury or court shall render a verdict or make a finding of (1) not guilty by reason of mental illness (See Rule 20.02, subd. 8(1) and (4) for the effect and consequences.); or (2) not guilty by reason of mental deficiency (See Rule 20.02, subd. 8(2) and (4) for the effect and consequences.); or (3) a verdict or finding of guilty (resulting in a judgment of conviction and sentence).*~~

~~*The provisions of Minn. Stat. § 611.026 (1971) placing the burden on the defendant of proving lack of mental responsibility by a preponderance of the evidence are continued by Rule 20.02, subd. 6(4)(b).*~~

If the court orders simultaneous examinations under Rule 20.04~~02, subd. 7~~, the examiner appointed must be qualified to provide a report for all necessary purposes.

~~*The provisions of Rule 20.02, subd. 8 for civil commitment (Rule 20.02, subd. 8(1) and (2)) following an acquittal by reason of mental illness or mental deficiency, for appeal from the determination in the civil commitment proceedings (Rule 20.02, subd. 8(3)), and for continuing supervision by the trial court while the defendant is under commitment (Rule 20.02, subd. 8(4)) are similar to those contained in Rules 20.01, subd. 4 and subd. 5 governing civil commitment of a defendant found incompetent to stand trial. Like those rules,*~~ *Rule 20.02, subd. 8, ~~is intended to meet~~addresses the constitutional requirements of equal protection and due process. ~~There is no~~No continuing supervision by the ~~criminal~~ trial court exists in misdemeanor cases.*

~~*Rules 20.02, subd. 8(4) and 20.01, subd. 5 both require that the trial court and the prosecuting attorney be notified of any proposed institutional transfer or partial hospitalization status (see Minn. Stat.§ 253B.15, subd. 11) or any proposed discharge, provisional discharge, or other termination of a defendant's civil commitment when that defendant has been found not guilty by reason of mental illness or deficiency or incompetent to proceed. The prosecuting attorney~~prosecutor ~~then~~ has the right to participate*

as a party in any civil proceedings being conducted under ~~the Minnesota Commitment Act of 1982,~~ Minn. Stat. ~~Ch~~ch. 253B~~, concerning those matters~~. ~~As such, the prosecuting attorney~~The prosecutor could question and present witnesses and argue for the continued commitment of the defendant in the civil proceedings. ~~A person committed as mentally ill and dangerous can be discharged from that commitment only under the provisions of Minn. Stat.§ 253B.18. Unlike patients committed as mentally ill only, patients committed as mentally ill and dangerous may not seek a discharge or provisional discharge of their commitment under Minn. Stat. § 253B.17 in the probate court which committed them or from the head of the institution under Minn. Stat. § 253B.16. Rather, Minn. Stat. § 253B.18 permits their discharge or provisional discharge only if ordered by the commissioner of public welfare after receiving a recommendation to that effect from an administrative special review board following a hearing. The commissioner's decision may be appealed to a three judge probate appeal panel appointed by the Supreme Court. The probate appeal panel then conducts a de novo hearing before deciding on the discharge or provisional discharge of the defendant. Minn. Stat. § 253B.19. Beyond that, any party may appeal an adverse decision to the Court of Appeals and an appeal of a release order stays the effect of that order until the appeal is decided by the Court of Appeals. Minn. Stat. § 253B.19, subd. 5. This is basically the same procedure as provided by the previous law under Minn. Stat. § 253A.15 as interpreted by the court in In the Matter of the Mental Illness of K.B.C., 308 N.W.2d 495 (Minn.1981).~~	
~~*Rule 20.03 (which is comparable to Minn.R.Civ.P. 35.03 and 35.04) permits the disclosure to and use by the prosecution of medical reports and hospital and medical records that are relevant to the defense of mental illness or mental deficiency. It includes reports and records that are made both before and after the defense of mental illness or mental deficiency is asserted. These rules allow the prosecution to call a defense-retained psychiatrist to testify at the mental illness portion of a bifurcated trial and such a practice does not violate the defendant's attorney-client privilege or the constitutional right to the effective assistance of counsel. State v. Dodis, 314 N.W.2d*~~	

~~*233 (Minn.1982).*~~ ~~*The defendant may turn over the copies of the reports and records to the court instead of to the prosecuting attorney. If the defendant does so, the court shall examine them to determine their relevancy. If the court determines they are relevant, they shall be given to the prosecuting attorney. Otherwise they shall be returned to the defendant.*~~ ~~*If the defendant is unable to comply with the order of the court for disclosure, either because the defendant does not have access to the reports or records, or for any other reason, a subpoena duces tecum may be issued under Rule 22 for their production. (See Rule 22.02).*~~ ~~*By Rule 20.03, subd. 2 the reports and records disclosed to the prosecution under Rule 20.03, subd. 1 and evidence obtained therefrom are admissible only when the defense of mental illness or mental deficiency is the sole defense or when that defense is separated for trial under Rule 20.02, subd. 6(4).*~~	

Proposed Revisions to Minn. R. Crim. P. 21

Original Language Showing Markup	Proposed Revised Language
Rule 21. Depositions	**Rule 21. Depositions**
Rule 21.01 When Taken	**Rule 21.01 When Taken**
~~Whenever there is a reasonable probability that the testimony of a prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1, the court before whom the proceedings are pending may, at any time after the filing of a complaint or indictment or entry of a tab charge upon the records, upon motion and notice to the parties,~~ The court may order that the testimony of ~~such~~ a witness be taken by oral deposition before any ~~designated~~ person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:	The court may order that the testimony of a witness be taken by oral deposition before any person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:
(a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1; (b) the prosecutor has filed a complaint or indictment, or a tab charge has been entered; and (c) the requesting party has filed a motion and provided notice of the motion to the parties.	(a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1; (b) the prosecutor has filed a complaint or indictment, or a tab charge has been entered; and (c) the requesting party has filed a motion and provided notice of the motion to the parties.
The order ~~shall~~must also direct the defendant's presence ~~to be present~~ at ~~the taking of~~ the deposition, and~~,~~ if the defendant is ~~handicapped~~disabled in communication, ~~that~~ direct the presence of a qualified interpreter ~~be present for the defendant~~.	The order must also direct the defendant's presence at the deposition, and if the defendant is disabled in communication, direct the presence of a qualified interpreter.
Rule 21.02 Notice of Taking	**Rule 21.02 Notice of Taking**
The party or person at whose ~~instance a~~request the court ordered the deposition ~~is to be taken~~ ~~shall~~must give to every other party reasonable notice of the time and place for taking the deposition. The notice ~~shall~~must state the name and address of each person to be examined. Unless the court directs otherwise, ~~ordered by the court~~	The party or person at whose request the court ordered the deposition must give to every other party reasonable notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. Unless the court directs otherwise, the notice must be served personally on the defendants. The notice must

the notice ~~to the defendant shall~~must be served personally on ~~all~~ the defendants. The notice ~~shall~~must inform ~~them~~the defendant ~~that they are required by order of court~~of the requirement to personally attend ~~the taking of~~ the deposition~~,~~. ~~and a~~ A copy of the court order ~~shall~~must be attached to the notice.

An officer having custody of any of the defendants ~~shall~~must be notified of the time and place set for the deposition, ~~and shall~~must produce ~~them~~the defendant at the examination, and keep ~~them~~the defendant in the presence of the witness during the examination.

On motion of a party ~~upon whom notice is~~ served with notice of the deposition, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

inform the defendant of the requirement to personally attend the deposition. A copy of the court order must be attached to the notice.

An officer having custody of any of the defendants must be notified of the time and place set for the deposition, produce the defendant at the examination, and keep the defendant in the presence of the witness during the examination.

On motion of a party served with notice of the deposition, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

Rule 21.03 Expenses of Defendant and Counsel; Failure to Appear

Subd. 1. Expenses~~, Defendant and Counsel~~. If a defendant ~~is unable to bear~~cannot afford ~~the~~travel, meals, and lodging expenses ~~of travel and subsistence of himself or herself and defense counsel~~ for the defendant and defense counsel's attendance at the examination, the court ~~shall~~must direct ~~that such~~ payment of their expenses ~~be paid~~ at public expense.

Rule 21.03 Expenses of Defendant and Counsel; Failure to Appear

Subd. 1. Expenses. If a defendant cannot afford travel, meals, and lodging expenses for the defendant and defense counsel's attendance at the examination, the court must direct payment of their expenses at public expense.

Subd. 2. Failure to Appear. If, after having received notice, a defendant who is not confined fails to appear at the examination without reasonable excuse~~ after having received notice thereof~~, the deposition may be taken and used ~~to the same extent~~ as though the defendant had been present.

Subd. 2. Failure to Appear. If, after having received notice, a defendant who is not confined fails to appear at the examination without reasonable excuse, the deposition may be taken and used as though the defendant had been present.

Rule 21.04 How Taken

Subd. 1. ~~Oral Deposition.~~ Depositions ~~shall~~must be taken upon oral examination, with accommodation for those who are disabled in communication.

Rule 21.04 How Taken

Subd. 1. Depositions must be taken upon oral examination, with accommodation for those who are disabled in communication.

Subd. 2. ~~Oath and Record of Examination.~~ The witness ~~shall be put on oath~~must be sworn, and a verbatim record of the testimony of the witness ~~shall be made~~must be taken.

The testimony ~~shall~~must be taken

Subd. 2. The witness must be sworn, and a verbatim record of the testimony of the witness must be taken.

The testimony must be taken stenographically

stenographically and transcribed unless the court ~~orders~~directs otherwise.	and transcribed unless the court directs otherwise.
~~In the event~~If the court orders ~~that~~recording of the deposition testimony ~~at a deposition be recorded~~ by other than stenographic means, the order ~~shall~~must designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. ~~If the order is made, a~~ A party may ~~nevertheless~~ arrange to have a stenographic transcription made at that party's own expense.	If the court orders recording of the deposition testimony by other than stenographic means, the order must designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at that party's own expense.
Subd. 3. Scope and Manner of Examination--Objections--Motion to Terminate.	Subd. 3. Scope and Manner of Examination--Objections--Motion to Terminate.
(a) ~~In no event shall the~~The defendant's deposition ~~of a party defendant~~cannot be taken without ~~the~~that defendant's consent.	(a) The defendant's deposition cannot be taken without that defendant's consent.
(b) The scope and manner of examination and cross-examination ~~shall~~must be the same as that allowed at trial. Each party ~~having possession of~~ possessing a statement of the witness being deposed ~~shall~~must make ~~the statement~~it available to the other party for examination and use at the ~~taking of a~~ deposition if ~~such~~the other party would be entitled to ~~the statement~~it at ~~the~~ trial.	(b) The scope and manner of examination and cross-examination must be the same as that allowed at trial. Each party possessing a statement of the witness being deposed must make it available to the other party for examination and use at the deposition if the other party would be entitled to it at trial.
(c) ~~All~~The person taking the deposition must record all objections made ~~at the time of~~during the examination to the qualifications of the person taking the deposition, ~~or to~~ the manner of taking it, ~~or to~~ the evidence presented, ~~or to~~ the conduct of any party, ~~and~~or any other objection to the proceedings ~~shall be recorded by the person before whom the deposition is taken~~. Evidence objected to ~~shall be~~is taken subject to the objections.	(c) The person taking the deposition must record all objections made during the examination to the qualifications of the person taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceedings. Evidence objected to is taken subject to the objections.
(d) ~~At any time during the taking of the deposition, on~~On motion of a party or of the deponent during the deposition, and ~~upon~~ a showing that the examination is being conducted in bad faith, or in ~~such~~a manner ~~as to~~that annoys, embarrasses, or oppresses the deponent or party or ~~to~~ elicits privileged testimony, the court ~~which~~that ordered the deposition ~~taken~~ may order the person conducting the examination to ~~cease~~stop ~~forthwith from~~ taking the deposition~~,~~. ~~or~~ The court may also limit the deposition ~~scope and manner of taking the deposition~~ by one or both of the following ~~ordering as follows~~:	(d) On motion of a party or of the deponent during the deposition, and on a showing that the examination is being conducted in bad faith, or in a manner that annoys, embarrasses, or oppresses the deponent or party or elicits privileged testimony, the court that ordered the deposition may order the person conducting the examination to stop taking the deposition. The court may also limit the deposition by one or both of the following:

(1) restricting its subject matterthat certain matters not be inquired into, or that the scope of the examination be limited to certain matters;

(2) requiring that the examination be conducted with no one present except persons designated by the court.

UponOn demand of the objecting party or deponent, the taking of the deposition shallmust be suspended for the time necessary to move for the order.

Rule 21.05 Transcription, Certification and Filing

When the testimony is fully transcribed, the person before whomwho took the deposition was taken shallmust certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the witness's testimony given by the witness. SuchThe person shallmust then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)," and shall The person must promptly file it with the court in which the case is pending, or send it by registered or certified mail to the clerk thereofcourt administrator for filing.

Upon theOn a party's request of a party, documents and other things produced during the examination of a witness, or copies thereofof them, shallmust be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party.

If the person producing the exhibits requests their return, the person taking the deposition shallmust mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Rule 21.06 Use of Deposition

Subd. 1. Unavailability of Witness. At the trial, or upon any hearing, a A part or all of a deposition may be used as substantive evidence at the trial or hearing, so far as to the extent it would be otherwise admissible under the rules of

(1) restricting its subject matter;

(2) requiring that the examination be conducted with no one present except persons designated by the court.

On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for the order.

Rule 21.05 Transcription, Certification and Filing

When the testimony is transcribed, the person who took the deposition must certify that the witness was duly sworn and that the deposition is a verbatim record of the witness's testimony. The person must then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)." The person must promptly file it with the court, or send it by registered or certified mail to the court administrator for filing.

On a party's request, documents and other things produced during the examination of a witness, or copies of them, must be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party.

If the person producing the exhibits requests their return, the person taking the deposition must mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used as if annexed to the deposition.

Rule 21.06 Use of Deposition

Subd. 1. Unavailability of Witness. A part or all of a deposition may be used as substantive evidence at the trial or hearing to the extent it would be otherwise admissible under the rules of evidence if:

evidence~~, may be used as substantive evidence~~ if ~~it appears~~: (a) ~~that~~ the witness is dead or unable to be present or to testify at the trial or hearing because of ~~then existing~~a physical or mental illness or infirmity; or (b) ~~that~~ the party offering the deposition has been unable to ~~procure~~obtain the attendance of the witness by subpoena, order of court, or other reasonable means.	(a) the witness is dead or unable to be present or to testify at the trial or hearing because of a physical or mental illness or infirmity; or (b) the party offering the deposition has been unable to obtain the attendance of the witness by subpoena, order of court, or other reasonable means.
Subd. 2. Inconsistent Testimony. A deposition may be used as substantive evidence at the trial or hearing~~, so far as~~ to the extent it would be otherwise admissible under the rules of evidence~~,~~ if the witness: (a) ~~gives testimony at the trial or hearing~~testifies inconsistently with the deposition; or (b) ~~if the witness~~ persists ~~at the hearing or trial~~ in refusing to testify despite ~~an~~a court order ~~of the court~~ to do so.	Subd. 2. Inconsistent Testimony. A deposition may be used as substantive evidence at the trial or hearing to the extent it would be otherwise admissible under the rules of evidence if the witness: (a) testifies inconsistently with the deposition; or (b) persists in refusing to testify despite a court order to do so.
Subd. 3. Impeachment. Any deposition may also be used by any party ~~for the purpose of~~to contradict~~ing~~ or impeach~~ing~~ the deponent's testimony ~~of the deponent~~ as a witness. A deposition may not be used if it appears that the ~~absence of the witness was~~party offering the deposition ~~procured or~~ caused ~~by the party offering the deposition~~the deposed witness's absence, unless part of the deposition has previously been offered by another party.	Subd. 3. Impeachment. Any deposition may also be used by any party to contradict or impeach the deponent's testimony as a witness. A deposition may not be used if it appears that the party offering the deposition caused the deposed witness's absence, unless part of the deposition has previously been offered by another party.
Rule 21.07 Effect of Errors and Irregularities in Depositions Subd. 1. As to Order or Notice. All errors and irregularities in the order or notice for taking a deposition are waived unless the objecting party promptly serves a written objection ~~is served promptly upon~~ the party giving the notice.	**Rule 21.07 Effect of Errors and Irregularities in Depositions** Subd. 1. As to Order or Notice. All errors and irregularities in the order or notice for taking a deposition are waived unless the objecting party promptly serves a written objection on the party giving the notice.
Subd. 2. As to Disqualification of Officer. Objection to taking a deposition because of a disqualification of the person ~~before whom it is to be taken~~taking it is waived unless made before the taking of the deposition begins, or as soon ~~thereafter~~ as the grounds for disqualification become known or could be discovered with	Subd. 2. As to Disqualification of Officer. Objection to taking a deposition because of a disqualification of the person taking it is waived unless made before the taking of the deposition begins, or as soon as the grounds for disqualification become known or could be discovered with reasonable diligence.

reasonable diligence.

Subd. 3. As to Taking of Deposition. Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one ~~which~~that might have been obviated or removed if presented at that time.

Errors and irregularities occurring at the ~~oral examination in the manner of taking the~~ deposition~~, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which~~ that might be ~~obviated, removed, or cured~~ remedied if promptly presented~~,~~ are waived unless ~~seasonable objection thereto is made~~timely objected to at the ~~taking of the~~ deposition.

Subd. 4. As to Completion and Return of Deposition. Errors and irregularities in the ~~manner in which~~transcription of the testimony~~, is transcribed~~ or in the way the deposition is prepared, recorded, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person taking the deposition under these rules are waived, unless a motion to suppress the deposition or some part ~~thereof~~of it ~~is made~~occurs with reasonable promptness after a party discovers ~~such~~the defect ~~is~~, or with due diligence might have ~~been, ascertained~~done so.

Rule 21.08 Deposition by Stipulation

The parties may by written stipulation provide that a deposition~~s~~ may be taken before any person, at any time or place, upon any notice, and in any manner, and ~~when so taken~~that it may be used like other depositions. These rules, unless ~~to the extent not~~ inconsistent with the stipulation, ~~shall otherwise~~ govern the taking of the deposition.

Comment—Rule 21

~~*Rule 21 is adapted from F.R.Crim.P. 15; Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15 (1971), 52 F.R.D. 409, 438; Minn.R.Civ.P. 28-30; and F.R.Civ.P. 30. Existing Minnesota law contains no provision for*~~

Subd. 3. As to Taking of Deposition. Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time.

Errors and irregularities occurring at the deposition that might be remedied if promptly presented are waived unless timely objected to at the deposition.

Subd. 4. As to Completion and Return of Deposition. Errors and irregularities in the transcription of the testimony, or in the way the deposition is prepared, recorded, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person taking the deposition under these rules, are waived unless a motion to suppress the deposition or some part of it occurs with reasonable promptness after a party discovers the defect, or with due diligence might have done so.

Rule 21.08 Deposition by Stipulation

The parties may by written stipulation provide that a deposition may be taken before any person, at any time or place, upon any notice, and in any manner, and that it may be used like other depositions. These rules, unless inconsistent with the stipulation, govern the taking of the deposition.

Comment—Rule 21

The requirement that a qualified interpreter be present for defendants disabled in communication is based upon Rule 8 of the General Rules of Practice for the District Courts and Minn. Stat. §§ 611.31-611.34.

~~*depositions to be taken on behalf of the prosecution in criminal cases. Minn. Stat. § 611.08 (1971) for taking depositions on behalf of the defendant is superseded by Rule 21. Minn. Stat. Ch. 597 (1971) where applicable to criminal cases is superseded to the extent it is inconsistent with Rule 21.*~~ ~~*Under Rule 21.01, an order may be made for taking the oral deposition of a prospective hearing or trial witness of either party only upon a showing of reasonable probability that the witness will be unavailable at the hearing or trial because of the conditions specified in Rule 21.06, subd. 1. (Rule 21.01 is adapted from F.R.Crim.P. 15(a) and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(a) (1971), 52 F.R.D. 409, 438-439.)*~~ *The requirement that a qualified interpreter be present for defendants* ~~*handicapped*~~*disabled in communication is based upon Rule* ~~*5*~~*8 of the General Rules of Practice for the District Courts and Minn. Stat. §§ 611.31-611.34* ~~*(1992)*~~*.* *The deposition may be taken before any person authorized to administer oaths designated by the order. If the deposition is taken outside the State of Minnesota, this would include any person authorized to administer oaths by the laws of Minnesota or of the state where the deposition is taken.* ~~*(*~~*See Moore v.* ~~*Kelsey*~~*Keesey, 26 Wash.2d 31, 173 P.2d 130 (1946).*~~*)*~~ ~~*Rule 21.02 providing for notice to the defendants and for the production of those in custody at the taking of the deposition is adapted from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(b) (1971), 52 F.R.D. 409, 439.*~~ *Notice* ~~*shall*~~*must normally be personally served on the defendant.* ~~*However*~~*But, in cases where the defendant is unavailable and time is of the essence, the court may order that notice be served on the defendant's attorney instead of the defendant. These rules do not deal with the constitutionality of the use of a deposition at trial when the defendant has not been personally notified.* ~~*The provisions of Rule 21.03, subd. 1 for the payment of the expenses of an indigent defendant comes from F.R.Crim.P. 15(c) and Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(c) (1971), 52 F.R.D. 409, 440.*~~ ~~*Rule 21.03, subd. 2 providing for the consequences of a defendant's failure to appear*~~	*The deposition may be taken before any person authorized to administer oaths designated by the order. If the deposition is taken outside the State of Minnesota, this would include any person authorized to administer oaths by the laws of Minnesota or of the state where the deposition is taken. See Moore v. Keesey, 26 Wash.2d 31, 173 P.2d 130 (1946).* *Notice must normally be personally served on the defendant. But, in cases where the defendant is unavailable and time is of the essence, the court may order that notice be served on the defendant's attorney instead of the defendant. These rules do not deal with the constitutionality of the use of a deposition at trial when the defendant has not been personally notified.* *Rule 21.05 does not require that the deposition be submitted to and signed by the witness. It requires only that the person before whom the deposition is taken certify that the deposition is a true record of the testimony given by the witness. Any dispute over the accuracy of the record must be dealt with under Rule 21.07, subd. 4 (completion and return of deposition).*

~~*at the deposition is adapted from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(b) (1971), 52 F.R.D. 409, 440.*~~

~~*Rule 21.04, subd. 2 providing for recording a deposition by other than stenographic means if the court so orders follows F.R.Civ.P. 30(b)(4).*~~

~~*Rule 21.04, subd. 3 relating to the deposition of a party defendant and the scope of examination and cross-examination is adapted from Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(d) (1971), 52 F.R.D. 409, 440-441.*~~

~~*Rule 21.04, subd. 3(c) providing for objections follows substantially the language of Minn.R.Civ.P. 30.03. The time and manner of making objections and the conditions under which objections are waived are treated in Rule 21.07.*~~

~~*Rule 21.04, subd. 3(d) for termination or limitation of the deposition is adapted from the language of Minn.R.Civ.P. 30.04 and F.R.Civ.P. 30(d).*~~

~~*Rule 21.05 governing the certification and filing of the deposition comes from Minn.R.Civ.P. 30.06 and F.R.Civ.P. 30(f).*~~ *Rule 21.05 does not~~, however,~~ require that the deposition be submitted to and signed by the witness. It requires only that the person before whom the deposition is taken certify that the deposition is a true record of the testimony given by the witness. Any dispute over the accuracy of the record ~~shall~~must be dealt with under Rule 21.07, subd. 4 (completion and return of deposition).*

~~*The last paragraph of Rule 21.05 governing exhibits is adapted from F.R.Civ.P. 30(f).*~~

~~*Rule 21.06 establishes the circumstances under which a deposition can be used during a trial or hearing if a deposition exists. The right to obtain a deposition from a prospective witness, however, is governed by Rule 21.01 and under that rule a deposition can be ordered by the court only if there is a reasonable probability that the prospective witness will be unavailable for the trial or hearing for any of the reasons specified in subdivision 1 of Rule 21.06.*~~

~~*Under Rule 21.06 a deposition may be used as substantive evidence when the witness is unavailable within the meaning of Rule 21.06, subd. 1. (Compare Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(e) (1971), 52 F.R.D. 409, 441.)*~~

~~*The deposition may also be used (1) as substantive evidence if the witness gives inconsistent testimony at the trial (Rule 21.06, subd. 2) (See Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(e) (1971), 52 F.R.D. 409, 441; California v. Green, 399 U.S. 149 (1970); Rules of Evidence For United States District Courts 801(c)(2) (Effective Date, July 1, 1973).); (2) as substantive evidence if the witness refuses to testify at trial (Rule 21.06, subd. 2) See Preliminary Draft of Proposed Amendments to F.R.Crim.P. 15(g)(2) (1971), 52 F.R.D. 409, 442 or (3) for impeachment. (See F.R.Crim.P. 15(e).)*~~ ~~*The last sentence of Rule 21.06, subd. 3, relating to the use of a deposition when the absence of the witness was caused by the party offering the deposition, is adapted from F.R.Crim.P. 15(e).*~~ ~~*Rule 21.07, subd. 1 for objections to the order of notice is taken from Minn.R.Civ.P. 32.01.*~~ ~~*Rule 21.07, subd. 2 for objections to the qualifications of the person taking the deposition follows the language of Minn.R.Civ.P. 32.02.*~~ ~~*Rule 21.07, subd. 3 covering objections to evidence is the same as Minn.R.Civ.P. 32.03(1), (2).*~~ ~~*Rule 21.07, subd. 4 for objections to errors in the completion and return of the deposition adopts the language of Minn.R.Civ.P. 32.04.*~~ ~~*Rule 21.08 providing for depositions by stipulation is adapted from Minn.R.Civ.P. 29.*~~	

Proposed Revisions to Minn. R. Crim. P. 22

Original Language Showing Markup	Proposed Revised Language
Rule 22. Subpoena	**Rule 22. Subpoena**
Rule 22.01 For Attendance of Witnesses; Form; Issuance	**Rule 22.01 For Attendance of Witnesses; Form; Issuance**
Subd. 1. When Issued. A subpoena may be issued ~~in a criminal proceeding only~~ for ~~the~~ attendance of a witness~~:~~ ~~before a grand jury, or at a hearing or trial before the court in which the proceeding is pending, or for attendance at the taking of a deposition.~~ • before a grand jury; • at a hearing before the court; • at a trial before the court; or • for the taking of a deposition.	Subd. 1. When Issued. A subpoena may be issued for attendance of a witness: • before a grand jury; • at a hearing before the court; • at a trial before the court; or • for the taking of a deposition.
Subd. 2. By Whom Issued. (a) ~~A subpoena shall be issued by the clerk~~The court administrator issues a subpoena under the court's seal ~~of the court~~, signed but otherwise blank, to the party requesting it, who must fill in the blanks before service. ~~It shall~~ The subpoena must state the name of the court and the title of the proceeding if the subpoena ~~be~~is for a hearing~~,~~ ~~or~~ trial~~,~~ ~~before the court;~~ or deposition. ~~but if the~~ (b) A ~~subpoena be for a~~ grand jury subpoena~~,~~ ~~it shall~~ must be ~~headed~~captioned "In the matter of the investigation ~~of~~by the grand jury of ~~the (particular) county conducting the proceeding~~_____." (Insert here the name of the county or counties conducting the investigation.) (c) The subpoena ~~shall~~ must command attendance ~~each person to whom it is directed to attend and give~~ and testimony at the time and place specified~~therein. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to the party requesting it, who shall fill in the blanks before it is served~~.	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. 3. Unrepresented Defendant. ~~A subpoena shall not be issued at the request of a~~ defendant not represented by ~~counsel without an order of court authorizing its issuance. The~~	Subd. 3. Unrepresented Defendant. A defendant not represented by an attorney may obtain a subpoena by court order. The request and order may be written or oral. An oral order

~~defendant's request to the court may be oral and the court's order may be either oral, if noted in the court's record, or written.~~an attorney may obtain a subpoena by court order. The request and order may be written or oral. An oral order must be noted in the court's record.	must be noted in the court's record.
Rule 22.02 For Production of Documentary Evidence and of Objects	**Rule 22.02 For Production of Documentary Evidence and of Objects**
A subpoena may ~~also~~ command a person to produce ~~the person to whom it is directed to produce the~~ books, papers, documents, or other designated objects ~~designated. therein.~~	A subpoena may command a person to produce books, papers, documents, or other designated objects.
The court on motion ~~made~~ promptly made may quash or modify ~~the~~ a subpoena if compliance would be unreasonable ~~or oppressive~~.	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~~that~~ books, papers, documents, or objects designated in the subpoena, including medical reports and medical and hospital records ordered ~~to be~~ disclosed under Rule 20.03, subd. 1, ~~be produced before the court at a time prior to~~before the trial or ~~prior to the time when they are to~~before being offered in evidence, and may ~~upon their production~~ permit ~~them to be inspected~~ the parties or their attorneys to inspect them~~by the parties or their attorneys~~.	The court may direct production in court of the books, papers, documents, or objects designated in the subpoena, including medical reports and medical and hospital 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.
Rule 22.03 Service	**Rule 22.03 Service**
A subpoena may be served by the sheriff, ~~by~~ a deputy sheriff, or any ~~other~~ person at least 18 years of age who is not a party.	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 ~~upon~~ on a person ~~named therein shall~~must be made by delivering a copy ~~thereof~~ to ~~such~~ the person or by leaving a copy at the person's usual place of abode with ~~some~~ a person of suitable age and discretion ~~then residing therein.~~who resides there.	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.
~~Additionally, a~~A subpoena may also be served by U.S. mail, but ~~such~~ service is effective only if the person named ~~therein~~ returns a signed admission acknowledging personal receipt of the subpoena. Fees and mileage need not be ~~tendered~~ paid in advance.	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 ~~at any place within~~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.

Comment—Rule 22

~~*Rule 22 is patterned upon F.R.Crim.P. 177 and Minn.R.Civ.P. 45 and supersedes Minn. Stat. Ch. 596 (1971) to the extent Ch. 596 is inconsistent with Rule 22.*~~

~~*Rule 22.01, subd. 1 prescribes the only purposes for which a subpoena may be issued in a criminal proceeding, that is, for appearance (1) before a grand jury, (2) at a hearing or trial, and (3) at the taking of a deposition.*~~

Subpoenas for attendance at a deposition may be issued only if the court ~~under Rule 21.01~~ has ordered the deposition or the parties have stipulated for a deposition under ~~by~~ Rule 21.~~08.~~

Under Rule 22.01, subd. 2, a subpoena shall be issued by the clerk. (This changes Minn. Stat. §~~§~~ 357.32~~, 388.05~~ for the issuance of subpoenas by the county attorney for grand jury and criminal cases.)

~~*The provisions of Rule 22.01, subd. 2 for the form and issuance of a subpoena follow F.R.Crim.P. 17(a) and Minn.R.Civ.P. 45.01, except that a subpoena duces tecum for production of evidence at a deposition may not be issued without an order of court authorizing the subpoena under Rule 21.01 or a stipulation under Rule 21.08.*~~

~~*Rule 22.01, subd. 3 restricting the issuance of a subpoena at the request of an unrepresented defendant except on order of court is intended to*~~

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.

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 Minn. Stat. § 611.06 to the extent the statute is inconsistent with the rule.

Rule 22 applies only to criminal proceedings in Minnesota. Minn. Stat. § 634.06 provides a method for compelling Minnesota residents to testify in criminal cases in other states.

~~*prevent the indiscriminate use of subpoenas.*~~ *This rule supersedes Minn. Stat. § 611.06* ~~*(1971)*~~ *to the extent the statute is inconsistent with the rule.* *The provisions of Rule 22.02 for subpoenas duces tecum are taken from F.R.Crim.P. 17(c) and Minn.R.Civ.P. 45.02. A subpoena duces tecum for production of evidence at a deposition may not be issued without an order of court authorizing the subpoena duces tecum under 21.01 or stipulation under Rule 21.08.* ~~*Rule 22.03 providing for service of a subpoena follows Minn.R.Civ.P. 45.03 except that the person serving it must be at least 18 years of age and no fees or mileage need be tendered. Additionally Rule 22.03 permits the subpoena to be served by U.S. Mail, but such service is effective only if the person named in the subpoena returns a signed admission of service. If service by mail is not so admitted the contempt sanction specified by Rule 22.05 is not available to enforce the subpoena.*~~ ~~*Under Rule 22.04 a subpoena may be served any place in the state. There are no limitations on the distance to the place in the state where the witness may be required to attend under a subpoena. (This is different from Minn.R.Civ.P. 45.04(2), 45.05.) (This rule changes Minn. Stat. § 597.11 (1971).)*~~ *Rule 22* ~~*is intended to apply*~~*applies only to criminal proceedings* ~~*pending*~~ *in* ~~*the State of*~~ *Minnesota.* ~~*It does not affect*~~ *Minn. Stat. § 634.06*~~*—(1971)*~~ *provid*~~*ing*~~*es a method for compelling Minnesota residents to testify in criminal cases in other states.* ~~*Rule 22.05 for contempt follows Minn.R.Civ.P. 45.06.*~~ ~~*Rule 22.06 continues the provisions of Minn. Stat. § 634.07 (1971) for compelling the attendance of non-residents to testify in criminal cases in Minnesota.*~~	

Proposed Revisions to Minn. R. Crim. P. 23

Original Language Showing Markup	Proposed Revised Language
Rule 23. Petty Misdemeanors and Violations Bureaus	**Rule 23. Petty Misdemeanors and Violations Bureaus**
Rule 23.01 Definition of Petty Misdemeanor	**Rule 23.01 Definition of Petty Misdemeanor**
~~As used in these rules, petty~~"Petty misdemeanor" means an ~~misdemeanor~~ offense punishable ~~only~~ by a fine of not more than $~~100~~ 300 or ~~such~~other ~~other dollar~~ amount ~~as is~~ established by ~~Minn. Stat. § 609.02, subd. 4a or other~~ statute as the maximum fine for a petty misdemeanor.	"Petty misdemeanor" means an offense punishable by a fine of not more than $300 or other amount established by statute as the maximum fine for a petty misdemeanor.
Rule 23.02 ~~Designation~~Certification as Petty Misdemeanor by Sentence Imposed	**Rule 23.02 Certification as Petty Misdemeanor by Sentence Imposed**
A conviction is deemed ~~to be for~~ a petty misdemeanor ~~as defined by Rule 23.01~~ if the sentence imposed is within petty misdemeanor ~~the~~ limits ~~provided by that rule for a petty misdemeanor~~.	A conviction is deemed a petty misdemeanor if the sentence imposed is within petty misdemeanor limits.
Rule 23.03 Violations Bureaus	**Rule 23.03 Violations Bureaus**
Subd. 1. Establishment. The district court may establish misdemeanor violations bureaus ~~at the places it determines~~.	Subd. 1. Establishment. The district court may establish misdemeanor violations bureaus.
Subd. 2. Fine Schedules.	Subd. 2. Fine Schedules.
(1) Uniform Fine Schedule. The ~~district court judges of the state shall~~ Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting ~~forth~~ fines ~~to be paid to violations bureaus~~ for ~~all statutory~~ statutory petty misdemeanors and for ~~such other statutory~~ statutory misdemeanors as ~~the judges may~~it selects.	(1) Uniform Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for statutory petty misdemeanors and for statutory misdemeanors as it selects.
(2) County Fine Schedules. ~~Upon~~ On establishment of a violations bureau, the district court ~~shall~~ must establish by court rule, for each county, a fine for any	(2) County Fine Schedules. On establishment of a violations bureau, the district court must establish by court rule, for each county, a fine for any misdemeanor that

misdemeanor ~~which~~that may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is ~~the same or~~ substantially the same as an offense included on the uniform fine schedule, the fine established ~~by the district court shall~~ must be the same ~~as the fine prescribed in the uniform fine schedule~~.	may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is substantially the same as an offense included on the uniform fine schedule, the fine established must be the same.
Subd. 3. Fine Payment. A defendant ~~shall~~ must be advised in writing before paying a fine to a violations bureau that ~~such a~~ payment constitutes a plea of guilty to the ~~misdemeanor designated~~charge and an admission that the defendant understands ~~that the defendant has the rights which the defendant voluntarily~~ and waives the right to: a. ~~to~~ a ~~trial to the~~ court or ~~to a~~ jury trial; b. ~~to be represented by~~ counsel; c. ~~to~~ be presumed innocent until proven guilty beyond a reasonable doubt; d. ~~to~~ confront and cross-examine all ~~prosecution~~ witnesses; and e. to ~~either~~ remain silent or to testify for the defense.	Subd. 3. Fine Payment. A defendant must be advised in writing before paying a fine to a violations bureau that payment constitutes a plea of guilty to the charge and an admission that the defendant understands and waives the right to: a. a court or jury trial; b. counsel; c. be presumed innocent until proven guilty beyond a reasonable doubt; d. confront and cross-examine all witnesses; and e. to remain silent or to testify for the defense.
Subd. 4. Functions of Violations Bureau. The violations bureau ~~shall~~ must process all citations for misdemeanors included on the county fine schedule, accept all fines payable on such citations at the bureau, set dates for arraignment, ~~on such citation charges to be heard in court,~~ accept bail, keep ~~proper~~ records, ~~and accounts~~ and perform ~~such~~ other duties as the court ~~prescribes~~directs.	Subd. 4. Functions of Violations Bureau. The violations bureau must process all citations for misdemeanors included on the county fine schedule, accept all fines payable on such citations at the bureau, set dates for arraignment, accept bail, keep records, and perform other duties as the court directs.
Subd. 5. Procedures of the Violations Bureau. The district court ~~shall~~ must supervise, and the ~~clerk~~court administrator ~~shall~~ must operate, the misdemeanor violations bureaus. The district court ~~shall~~must ~~, consistent with these rules,~~ issue rules governing the duties and operation of the	Subd. 5. Procedures of the Violations Bureau. The district court must supervise, and the court administrator must operate, the misdemeanor violations bureaus. The district court must issue rules governing the duties and operation of the bureaus consistent with these rules. The court administrator must

bureaus consistent with these rules. The ~~clerk~~ court administrator ~~shall~~ must assign one or more ~~deputy~~ clerks to ~~discharge and~~ perform the duties of the bureaus.	assign one or more clerks to perform the duties of the bureaus.
Rule 23.04 ~~Designation~~Certification as a Petty Misdemeanor in a Particular Case	**Rule 23.04 Certification as a Petty Misdemeanor in a Particular Case**
~~If at or before the time of arraignment or trial on an alleged misdemeanor violation, the prosecuting attorney certifies to the court that in the prosecuting attorney's opinion it is in the interests of justice that the defendant not be incarcerated if convicted, the alleged offense shall be treated as a petty misdemeanor if the defendant consents and the court approves.~~ Before trial, the prosecutor may certify the offense as a petty misdemeanor if the prosecutor does not seek incarceration and seeks a fine at or below the statutory maximum for a petty misdemeanor. Certification takes effect only on approval of the court and consent of the defendant.	Before trial, the prosecutor may certify the offense as a petty misdemeanor if the prosecutor does not seek incarceration and seeks a fine at or below the statutory maximum for a petty misdemeanor. Certification takes effect only on approval of the court and consent of the defendant.
Rule 23.05 Procedure in Petty Misdemeanor Cases	**Rule 23.05 Procedure in Petty Misdemeanor Cases**
Subd. 1. No Right to Jury Trial. ~~There shall be no~~No right to a jury trial ~~upon~~ exists in a misdemeanor charge ~~which by operation of Rule 23.04 is to be treated~~ certified as a petty misdemeanor under Rule 23.04.	Subd. 1. No Right to Jury Trial. No right to a jury trial exists in a misdemeanor charge certified as a petty misdemeanor under Rule 23.04.
Subd. 2. Right to Appointed Counsel. A defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. In these cases the defendant must qualify financially prior to appointment. ~~Right to Appointed Counsel. If a defendant is financially unable to afford counsel, the Court shall, unless waived, appoint counsel to represent such a defendant who is charged with a misdemeanor which by operation of~~	Subd. 2. Right to Appointed Counsel. A defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. In these cases the defendant must qualify financially prior to appointment.

~~Rule 23.04 is to be treated as a petty misdemeanor and which also involves moral turpitude.~~

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

Rule 23.06 Effect of Conviction

A petty misdemeanor ~~shall~~ is not ~~be~~ considered a crime.

Comment—Rule 23

~~*Procedure is established to dispose of certain designated minor offenses without the necessity of a court appearance, and also to reduce a misdemeanor punishable by incarceration to one punishable by fine only, before trial of the alleged offense.*~~

The definition of petty misdemeanor as used in Rule 23 is~~, under Rule 23.01,~~ broader than the definition provided by Minn. Stat. § 609.02, subd. 4a.~~ By that statute a petty misdemeanor refers~~which refers ~~solely~~ to a statutory violation punishable only by a fine of not more than the specified amount. Under Rule 23.01, read in conjunction with the definition of "misdemeanor" in Rule 1.04(a), the term "petty misdemeanor" ~~as used in Rule 23~~ refers also to violations of local ordinances, charter provisions, rules, or regulations.

These rules do not specify any procedures or sanctions for enforcing payment of fines in petty misdemeanor cases. Existing law~~, however, does~~ permits some enforcement methods. The court may delay

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

Rule 23.06 Effect of Conviction

A petty misdemeanor is not considered a crime.

Comment—Rule 23

The definition of petty misdemeanor as used in Rule 23 is broader than the definition provided by Minn. Stat. § 609.02, subd. 4a, which refers to a statutory violation punishable only by a fine of not more than the specified amount. Under Rule 23.01, read in conjunction with the definition of "misdemeanor" in Rule 1.04(a), the term "petty misdemeanor" refers also to violations of local ordinances, charter provisions, rules, or regulations.

These rules do not specify any procedures or sanctions for enforcing payment of fines in petty misdemeanor cases. Existing law permits some enforcement methods. The court may delay acceptance of a plea until the defendant has the money to pay the fine. If a defendant is unable to pay a fine when imposed, the court may set a date by which the defendant must either pay the fine or reappear in court. If the fine is not paid by the date set and the defendant does not reappear as ordered to explain why it has not been paid, the court may issue a bench warrant for the defendant's arrest and set bail

acceptance of a plea ~~agreement~~ until the defendant has the money to pay the ~~agreed~~ fine. If a defendant is unable to pay a fine when imposed, the court may set a date by which the defendant must either pay the fine or reappear in court. If the fine is not paid by the date set and the defendant does not reappear as ordered to explain why it has not been paid, the court may issue a bench warrant for the defendant's arrest and set bail in the amount of the fine. Any bail collected could then be used under Minn. Stat. § 629.53 to pay the fine. Contempt procedures under Minn. Stat. ~~Ch.~~ch. 588 can also be used to enforce payment of a fine when the defendant has willfully refused payment. ~~The prosecuting attorney may refuse to reduce an offense to a petty misdemeanor if the defendant has failed to pay any past fines. The possibility of an~~An administrative sanction may exist~~s~~ if the defendant has failed to pay a fine imposed upon conviction of violating a law regulating the operation or parking of motor vehicles. In such cases, the commissioner of public safety is required under Minn. Stat. § 171.16, subd. 3, to suspend the defendant's license for 30 days or until the fine is paid if the court determines that the defendant has the ability to pay the unpaid fine. Similar sanctions for non-traffic offenses might prove effective, but would require legislative action.

Rule 23.02, ~~providing that~~which deems a conviction ~~is deemed to be for~~ a petty misdemeanor if the sentence imposed is ~~not more than $100 or such other amount as is set by the legislature as the maximum petty misdemeanor fine~~within petty misdemeanor limits, is similar to Minn. Stat. § 609.13, which provides for the reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor ~~Rule 23.06 provides that a petty misdemeanor shall not be considered a crime~~. in the amount of the fine. Any bail collected could then be used under Minn. Stat. § 629.53 to pay the fine. Contempt procedures under Minn. Stat. ch. 588 can also be used to enforce payment of a fine when the defendant has willfully refused payment. An administrative sanction may exist if the defendant has failed to pay a fine imposed upon conviction of violating a law regulating the operation or parking of motor vehicles. In such cases, the commissioner of public safety is required under Minn. Stat. § 171.16, subd. 3, to suspend the defendant's license for 30 days or until the fine is paid if the court determines that the defendant has the ability to pay the unpaid fine. Similar sanctions for non-traffic offenses might prove effective, but would require legislative action.

Rule 23.02, which deems a conviction a petty misdemeanor if the sentence imposed is within petty misdemeanor limits, is similar to Minn. Stat. § 609.13, which provides for the reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor.

For uniformity in fines imposed for certain misdemeanors throughout the state, see Minn. Stat. § 609.101, subd. 4.

The written advice required by Rule 23.03, subd. 3 may be included upon the citation issued for the offense. This citation may be set forth in the form of an envelope for mailing the fine to the bureau. This rule does not require a defendant to sign a written plea of guilty.

See also Rule 5.02 as to appointment of counsel upon request of the defendant or interested counsel when the prosecution is for a misdemeanor not punishable by incarceration.

Contrary to what is provided in Rule

~~*Rule 23.03 gives the court authority to establish violations bureaus and establishes certain procedures for such bureaus. Rule 23.03, subd. 1 is similar to Minn. Stat. § 487.28, subd. 1 except that the violations bureau under the rule may handle any misdemeanor designated by the court and not just traffic and ordinance violations. See Minn. Stat. §§ 488A.08, 488A.25, and 487.28 (1981) as to the establishment of violations bureaus in Hennepin County, Ramsey County, and all other counties, respectively.*~~	*23.04, Minn. Stat. § 609.131, enacted by the legislature in 1987 (Chapter 329, Section 6), purports to allow the reduction of a misdemeanor to a petty misdemeanor without the consent of the defendant. The Advisory Committee is aware of this statute, but after consideration rejected any change in the Rule. On such matters of procedure the Rules of Criminal Procedure take precedence over statutes to the extent there is any inconsistency. State v. Keith, 325 N.W.2d 641 (Minn. 1982).*
For ~~the purpose of providing~~ uniformity in ~~the~~ fines imposed for certain ~~common~~ misdemeanors throughout the state, see Minn. Stat. § 609.101, subd. 4. ~~Rule 23.03, subd. 2(1) provides that the district court judges of the state shall adopt a uniform fine schedule setting forth the fines to be paid to violations bureaus for all statutory petty misdemeanors and for such other statutory misdemeanors as the judges select. As necessary, the judges should revise the schedule to assure that the fines thereon are appropriate and to add new offenses. For the purpose of adopting a uniform schedule, the President of the Minnesota Judges' Association or the successor organization to that association shall call such meetings as are necessary of all district court judges of the state.~~	
~~*Rule 23.03, subd. 2(2) provides for the establishment of a county fine schedule. This schedule will include all misdemeanors and petty misdemeanors for which a fine may be paid at a violations bureau in lieu of a court appearance. The county fine schedule should be established by the district court and may specify a fine for any misdemeanor, including ordinance violations, whether or not included on the uniform fine schedule. When the offense, however designated, is the same or substantially the same as a statutory offense included on the uniform fine schedule, then*~~	

~~*the fine in the county schedule must be the same as that prescribed in the uniform schedule. Therefore, the fine for an illegal turn under an ordinance, if included on a county fine schedule, must be the same as provided in the uniform schedule for an illegal turn under the statute.*~~

~~*Rule 23.03, subd. 3 provides that a defendant must be advised in writing that payment of a fine through a violations bureau constitutes a plea of guilty to the designated offense and an admission that the defendant understands and waives those rights specified in the rule.*~~

The written advice required by Rule 23.03, subd. 3 ~~*could*~~ *may be included upon the citation issued for the offense. This citation* ~~*could*~~ *may be set forth in the form of an envelope for mailing the fine to the bureau.* ~~*In such suitable form, the fine schedule should be included to advise the defendant of the fine for the particular offense charged.*~~ *This rule does not require a defendant to sign a written plea of guilty.*

~~*Rule 23.03, subds. 4 and 5 concerning the functions and procedures of the violations bureaus are substantially the same as Minn. Stat. § 487.28, subd. 2. To the extent there are any inconsistencies that statute is superseded.*~~

~~*Rule 23.04 provides that, with the consent of the defendant and approval of the court, a misdemeanor otherwise punishable by incarceration shall be treated as a petty misdemeanor on the certification of the prosecutor. This certification should allege that in the prosecutor's opinion it is in the interests of justice, irrespective of the outcome, that the defendant not be incarcerated. If this procedure is followed, the defendant upon conviction may be fined no more than the amount specified in Rule 23.01 as the maximum fine for a petty misdemeanor.*~~

~~*The defendant, however, then has no right to the jury trial to which the defendant would otherwise be entitled under Rule 26.01, subd. 1(1)(a) (see Rule 23.05, subd. 1). Also, under Rule 23.05, subd. 2, the defendant financially unable to afford counsel will not automatically have counsel appointed on request as would otherwise occur under Rule 5.02 unless the certified petty misdemeanor involves moral turpitude. See also Rule 5.02 as to the appointment of counsel upon request of the defendant or interested counsel or upon the court's initiative when the prosecution is for a misdemeanor not punishable by incarceration and moral turpitude is not involved.*~~

See also Rule 5.02 as to ~~the~~ appointment of counsel upon request of the defendant or interested counsel when the prosecution is for a misdemeanor not punishable by incarceration.

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

~~*Rule 23.05, subd. 3 provides that the procedure in cases where an offense has been designated as a petty misdemeanor under Rule 23.04 shall be the same as for misdemeanors punishable by incarceration, except for the right to a jury trial and to counsel which are governed by Rule 23.05, subds. 1 and 2.*~~

~~*By Rule 23.06 a petty misdemeanor*~~

~~*shall not be considered a crime. This rule covers offenses designated as petty misdemeanors by the applicable statute or ordinance. The rule also covers misdemeanor offenses designated to be treated as petty misdemeanors under Rule 23.04 and misdemeanor offenses deemed to be petty misdemeanors under Rule 23.02 by reason of the sentence imposed by the court.*~~	

Proposed Revisions to Minn. R. Crim. P. 24

Original Language Showing Markup	Proposed Revised Language
Rule 24. Venue	**Rule 24. Venue**
Rule 24.01 Place of Trial	**Rule 24.01 Place of Trial**
The case ~~shall~~ must be tried in the county where the offense was committed except as these rules direct otherwise ~~provided by these rules~~.	The case must be tried in the county where the offense was committed unless~~except as~~ these rules direct otherwise.
Rule 24.02 Venue in Special Cases	**Rule 24.02 Venue in Special Cases**
Subd. 1. Offense Committed on ~~Public or Private~~a Conveyance. When an~~y~~ offense ~~is committed~~occurs within the state on a ~~public or private~~ conveyance, and ~~it is doubtful in~~ doubt exists as to where~~which county~~ the offense occurred, the case may be prosecuted ~~and tried~~ in any county through which the conveyance traveled in the course of the trip during which the offense was committed~~, or in the county where such trip began or terminated~~.	Subd. 1. Offense Committed on a Conveyance. When an offense occurs within the state on a conveyance, and doubt exists as to where the offense occurred, the case may be prosecuted in any county through which the conveyance traveled in the course of the trip during which the offense was committed.
Subd. 2. Offenses Committed on County Lines. Offenses committed on or within 1,500 feet (457.2M) of the boundary line between two counties may be alleged in the complaint or indictment to have been committed in either of them, and may be prosecuted ~~and tried~~ in either county.	Subd. 2. Offenses Committed on County Lines. Offenses committed on or within 1,500 feet (457.2M) of the boundary line between two counties may be alleged in the complaint or indictment to have been committed in either of them, and may be prosecuted in either county.
Subd. 3. Injury or Death in One County from an Act Committed in Another County. If a person commits an act ~~is committed~~ in one county ~~resulting in~~causing injury or death in another county, the offense may be prosecuted ~~and tried~~ in either county. If ~~it is doubtful~~doubt exists as to ~~in which one of two or more counties~~where the act, ~~was committed or~~ injury, or death occurred, the offense may be prosecuted ~~and tried~~ in any ~~one~~ of ~~such~~the counties.	Subd. 3. Injury or Death in One County from an Act Committed in Another County. If a person commits an act in one county causing injury or death in another county, the offense may be prosecuted in either county. If doubt exists as to where the act, injury, or death occurred, the offense may be prosecuted in any of the counties.
Subd. 4. Prosecution in County Where Injury or Death Occurs. If a person commits an act ~~is committed~~ either within or ~~without~~outside the limits of the state and injury or death results, the offense may be prosecuted ~~and tried~~ in the	Subd. 4. Prosecution in County Where Injury or Death Occurs. If a person commits an act either within or outside the limits of the state and injury or death results, the offense may be prosecuted in the county of this state where the

county of this state where the injury or death occurs, or where the body of the deceased is found.	injury or death occurs, or where the body of the deceased is found.
Subd. 5. Prosecution When Death Occurs Outside State. If a person commits an assault ~~is committed~~ in this state resulting in death outside the state, the homicide may be prosecuted ~~and tried~~ in the county where the assault ~~was committed~~occurred.	Subd. 5. Prosecution When Death Occurs Outside State. If a person commits an assault in this state resulting in death outside the state, the homicide may be prosecuted in the county where the assault occurred.
Subd. 6. Kidnapping. ~~The offense of k~~Kidnapping may be prosecuted ~~and tried either~~ in ~~the~~any county ~~where the offense was committed or in any county~~ through ~~or in~~ which the person kidnapped was taken or kept while under confinement or restraint.	Subd. 6. Kidnapping. Kidnapping may be prosecuted in any county through which the person kidnapped was taken or kept while under confinement or restraint.
Subd. 7. Libel. ~~The offense of p~~Publication of a libel contained in a newspaper published in the state may be prosecuted ~~and tried~~ in any county where the paper was published or circulated~~; .~~ ~~but a~~A person ~~shall~~ cannot be prosecuted for publication of the same libel against the same person in more than one county.	Subd. 7. Libel. Publication of a libel contained in a newspaper published in the state may be prosecuted in any county where the paper was published or circulated. A person cannot be prosecuted for publication of the same libel against the same person in more than one county.
Subd. 8. Bringing Stolen Goods Into State. Whoever brings stolen property into the state in violation of Minn. Stat. § 609.525 ~~(1971)~~ may be prosecuted ~~and tried~~ in any county~~, but not more than one county,~~ into or through which the property was brought.	Subd. 8. Bringing Stolen Goods Into State. Whoever brings stolen property into the state in violation of Minn. Stat. § 609.525 may be prosecuted in any county into or through which the property was brought.
Subd. 9. Obscene or Harassing Telephone Calls; Wireless or Electronic Communication. Violations of Minn. Stat. § 609.79 ~~(1971)~~ may be prosecuted ~~and tried either~~ at the place where the ~~telephone~~ call is made or where it is received or, in the case of wireless or electronic communication, where the sender or receiver resides.	Subd. 9. Obscene or Harassing Telephone Calls; Wireless or Electronic Communication. Violations of Minn. Stat. § 609.79 may be prosecuted at the place where the call is made or where it is received or, in the case of wireless or electronic communication, where the sender or receiver resides.
Subd. 10. Fair Campaign Practices. Violations of Minn. Stat. § 211B.15 ~~(2000)~~ prohibiting corporate contributions to political campaigns may be prosecuted ~~and tried~~ in the county where ~~such~~ the payment or contribution ~~is~~was made, ~~or~~where services were rendered, or ~~in any county wherein such~~where money ~~has been~~was paid or distributed.	Subd. 10. Fair Campaign Practices. Violations of Minn. Stat. § 211B.15 prohibiting corporate contributions to political campaigns may be prosecuted in the county where the payment or contribution was made, where services were rendered, or where money was paid or distributed.

Subd. 11. Series of Offenses Aggregated. When a series of offenses are aggregated ~~pursuant to~~under Minn. Stat. § 609.52, subd. 3(5) ~~(2000)~~ and the offenses have been committed in more than one county, the case may be ~~presented and tried~~prosecuted in any ~~one of the counties~~county in which one or more of the offenses ~~was committed~~occurred.	Subd. 11. Series of Offenses Aggregated. When a series of offenses are aggregated under Minn. Stat. § 609.52, subd. 3(5) and the offenses have been committed in more than one county, the case may be prosecuted in any county in which one or more of the offenses occurred.
Subd. 12. Non-Support of Spouse or Child. Violations of Minn. Stat. § 609.375 ~~(2001)~~ for non-support of spouse or child may be prosecuted ~~and tried~~ in the county ~~where the defendant, spouse or child reside~~in which the person obligated to pay or entitled to receive support resides, or where the child resides.	Subd. 12. Non-Support of Spouse or Child. Violations of Minn. Stat. § 609.375 for non-support of spouse or child may be prosecuted in the county in which the person obligated to pay or entitled to receive support resides, or where the child resides.
Subd. 13. Refusal to Submit to Chemical Test Crime. Violations of Minn. Stat. § 169A.20, subd. 2 for refusal to submit to a chemical test may be prosecuted ~~either~~ in the jurisdiction where the arresting officer observed the defendant driving, operating, or in the control of the motor vehicle, or in the jurisdiction where the refusal occurred.	Subd. 13. Refusal to Submit to Chemical Test Crime. Violations of Minn. Stat. § 169A.20, subd. 2 for refusal to submit to a chemical test may be prosecuted in the jurisdiction where the arresting officer observed the defendant driving, operating, or in the control of the motor vehicle, or in the jurisdiction where the refusal occurred.
Subd. 14. Contributing to Need for Protection or Services for a Child. Violations of Minn. Stat. § 260C.425 for contributing to need for protection or services for a child, may be prosecuted ~~and tried~~ in the county where the child is found, ~~or~~ resides, or where the alleged act ~~of contributing~~ occurred.	Subd. 14. Contributing to Need for Protection or Services for a Child. Violations of Minn. Stat. § 260C.425 for contributing to need for protection or services for a child, may be prosecuted in the county where the child is found, resides, or where the alleged act occurred.
Subd. 15. Criminal Tax Penalties. If a person commits ~~two or more~~ violations of Minn. Stat. § 289A.63 ~~are committed by the same person~~ in more than one county, the person may be prosecuted ~~and tried~~ for all of the violations in any county in which one of the violations ~~was committed~~occurred.	Subd. 15. Criminal Tax Penalties. If a person commits violations of Minn. Stat. § 289A.63 in more than one county, the person may be prosecuted for all of the violations in any county in which one of the violations occurred.
Subd. 16. Municipalities in More than One County. ~~The place of prosecution and trial for offenses subject to prosecution under the provisions of Minn. Stat. ch. 487, which occur in a municipality located in more than one judicial district, or in~~ Offenses occurring within a municipality located in more than one county ~~within a judicial~~ or district~~, shall be determined pursuant to Minn. Stat. § 487.21, subd. 4 and any~~	Subd. 16. Municipalities in More than One County. Offenses occurring within a municipality located in more than one county or district must be prosecuted in the county where the municipality's city hall is located, unless the municipality designates by ordinance some other county or district in which part of the municipality is located.

~~successor statutes. The place of prosecution and trial for misdemeanor and gross misdemeanor offenses which occur in the city of St. Anthony shall be determined pursuant to Minn. Stat. § 488A.01, subd. 6 and any successor statutes.~~ must be prosecuted in the county where the municipality's city hall is located, unless the municipality designates by ordinance some other county or district in which part of the municipality is located.	
Subd. 17. Depriving Another of Custodial or Parental Rights. Violations of Minn. Stat. § 609.26 for depriving another of custodial or parental rights may be prosecuted ~~and tried either~~ in the county in which the child was taken, concealed, or detained, or ~~in~~ the county of lawful residence of the child.	Subd. 17. Depriving Another of Custodial or Parental Rights. Violations of Minn. Stat. § 609.26 for depriving another of custodial or parental rights may be prosecuted in the county in which the child was taken, concealed, or detained, or the county of lawful residence of the child.
Subd. 18. Child Abuse. A criminal action arising out of an incident of alleged child abuse may be prosecuted ~~and tried either~~ in the county where the alleged abuse occurred or the county where the child is found.	Subd. 18. Child Abuse. A criminal action arising out of an incident of alleged child abuse may be prosecuted in the county where the alleged abuse occurred or the county where the child is found.
Rule 24.03 Change of Venue	**Rule 24.03 Change of Venue**
Subd. 1. Grounds. The case may be transferred to another county:	Subd. 1. Grounds. The case may be transferred to another county:
a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending; b. For the convenience of parties and witnesses; c. In the interests of justice; d. As provided by Rule 25.02 governing prejudicial publicity.	a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending; b. For the convenience of parties and witnesses; c. In the interests of justice; d. As provided by Rule 25.02 governing prejudicial publicity.
Subd. 2. County to Which Transferred. For the purposes of change of venue under this rule the district referred to in Minn. Const. Art. I, § 6 ~~shall be all that~~is the area within the geographical boundaries of the State of Minnesota.	Subd. 2. County to Which Transferred. For the purposes of change of venue under this rule the district referred to in Minn. Const. Art. I, § 6 is the area within the geographical boundaries of the State of Minnesota.
Subd. 3. Time for Motion for Change of Venue. Except as permitted by Rule 25.02, ~~A~~a motion for change of venue~~, except as permitted by Rule 25.02, shall~~ must be made at the time	Subd. 3. Time for Motion for Change of Venue. Except as permitted by Rule 25.02, a motion for change of venue must be made at the time prescribed in Rule 10 for making pretrial motions.

prescribed ~~by~~in Rule 10 for making pretrial motions.

Subd. 4. Proceedings on Transfer. If the case is transferred under these rules, all records in the case, or certified copies ~~thereof shall~~ of them, must be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that the defendant be transported to the sheriff of the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case ~~shall~~ must be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release, ~~under these rules~~ those conditions ~~shall~~ must be continued ~~upon~~on the further condition that the defendant ~~shall~~ must appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

Comment—Rule 24

~~*Rule 24.01 Place of Trial.*~~

~~*Except as provided in Rule 24.02 governing special cases, and Rule 24.03 governing change of venue, criminal cases shall be tried in the county where the offense was committed. This adopts the general rule provided by Minn. Stat. § 627.01 (1971).*~~ *By Rule 11.01, Omnibus Hearings may be held in any county in the district court's judicial district in which the offense was committed.* ~~*The place of filing a complaint is provided for by Rule 2.01; the defendant's first appearance in court (a) following an arrest upon a complaint by Rules 3.02, subd. 2 and 4.01 or (b) following an arrest without a warrant by Rule 4.02, subd. 5; the defendant's appearance in the district court following a complaint (Rule 8) by Rule 5.03.*~~ *Objections to the place of trial are waived unless asserted before commencement of the trial.*

~~*Rule 24.02 Venue in Special Cases.*~~

~~*This rule is adopted from the provisions of existing law as follows:*~~

~~*Rule 24.02, subd. 1 (Offense Committed on Public or Private Conveyances) from Minn. Stat. §§ 627.05, 627.06 (1971) (This would include*~~

Subd. 4. Proceedings on Transfer. If the case is transferred under these rules, all records in the case, or certified copies of them, must be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that the defendant be transported to the sheriff of the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case must be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release, those conditions must be continued on the further condition that the defendant must appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

Comment—Rule 24

By Rule 11.01, Omnibus Hearings may be held in any county in the district court's judicial district in which the offense was committed. Objections to the place of trial are waived unless asserted before commencement of the trial.

Rule 24.02, subd. 16 (Municipalities in More Than One County) is derived from Minn. Stat. § 484.80.

Rule 24.02, subd. 18 (Child Abuse) is derived from Minn. Stat. § 627.15.

Rule 24.03, subd. 1 (Grounds for Change of Venue) permits a change of venue upon motion of the defendant or prosecution, or on the court's initiative upon any of the grounds specified in the rule.

Minn. Const. Art. I, § 6 provides that the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. Under rule 24.03, subd. 2 (County to Which Transferred), change of venue may be ordered upon any of the specified grounds to any county of the state.

offenses committed on water-craft, aircraft, or vehicles.); *Rule 24.02, subd. 2 (Offenses Committed on County Lines) from Minn. Stat. § 627.07 (1971);* *Rule 24.02, subd. 3 (Injury or Death in One County from an Act Committed in Another County) from Minn. Stat. § 627.08 (1971);* *Rule 24.02, subd. 4 (Prosecution in County Where Injury or Death Occurs) from Minn. Stat. § 627.09 (1971);* *Rule 24.02, subd. 5 (Prosecution When Death Occurs Outside State) from Minn. Stat. § 627.10 (1971);* *Rule 24.02, subd. 6 (Kidnapping) from Minn. Stat. § 627.13 (1971);* *Rule 24.02, subd. 7 (Libel) from Minn. Stat. § 627.14 (1971);* *Rule 24.02, subd. 8 (Bringing Stolen Goods Into State) from Minn. Stat.§ 609.525;* *Rule 24.02, subd. 9 (Obscene or Harassing Telephone Calls) from Minn. Stat. § 609.79 (1971);* *Rule 24.02, subd. 10 (Fair Campaign Practices) from Minn. Stat. § 211B.15 (2000);* *Rule 24.02, subd. 11 (Series of Offenses Aggregated) from Minn. Stat. § 609.52, subd. 3(5) (2000);* *Rule 24.02, subd. 12 (Non-Support of Spouse or Child) from Minn. Stat. § 609.375 (2000).* *Rule 24.02, subd. 13 (Refusal to Submit to a Chemical Test Crime) from Minn. Stat. § 169A.43, subd. 3 (2000);* *Rule 24.02, subd. 14 (Contributing to Need for Protection or Services for a Child) from Minn. Stat. § 260C.425, subd. 2 (2000);*	

~~*Rule 24.02, subd. 15 (Criminal Tax Penalties) from Minn. Stat. § 289A.63, subd. 11 (2000);*~~

~~*Rule 24.02, subd. 16 (Municipalities in More than One County) from Minn. Stat. § 487.21, subd. 4 (2000) and Minn. Stat. § 488A.01, subd. 6 (2001);*~~

~~*Rule 24.02, subd. 17 (Depriving Another of Custodial or Parental Rights) from Minn. Stat. § 609.26, subd. 3 (2000); and*~~

Rule 24.02, subd. 16 (Municipalities in More Than One County) is derived from Minn. Stat. § 484.80.

Rule 24.02, subd. 18 (Child Abuse) is derived from Minn. Stat. § 627.15 ~~(2000)~~.

~~*Rule 24.03 Change of Venue.*~~

Rule 24.03, subd. 1 (Grounds for Change of Venue) permits a change of venue upon motion of the defendant or prosecution, or on the court's initiative upon any of the grounds specified in the rule. ~~Change of venue (a) for a fair and impartial trial (Rule 24.03, subd. 1a) is taken from Minn. Stat. § 627.01 (1971); (b) for the convenience of parties and witnesses (Rule 24.03, subd. 1b) from F.R.Crim.P. 21(b); (c) in the interests of justice (Rule 24.03, subd. 1c) from F.R.Crim.P. 21(b) and Minn. Stat. § 627.04 (1971); and (d) to avoid prejudicial publicity (Rule 25.02) from ABA Standards, Fair Trial and Free Press, 3.2(c) (Approved Draft, 1968).~~

~~*Rule 24.03, subd. 2 (County to Which Transferred). Under this rule, change of venue may be ordered upon any of the specified grounds to any county of the state.*~~ *Minn. Const. Art. I, § 6 provides that the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. Under rule 24.03, subd. 2 (County to Which Transferred), change of venue may be ordered upon any of the specified grounds to any county of the state. ~~Rule 24.01 provides that a criminal case shall be tried~~*

~~*in the county where the offense was committed thus establishing the district referred to in the constitution. For the purpose of change of venue under Rule 24.03, subd. 2, however, the district of trial may be any county in the state.*~~ ~~*Rule 24.03, subd. 3 (Time for Motion for Change of Venue). Except as provided by Rule 25.02 (Special Rules Governing Prejudicial Publicity) a motion for change of venue shall be made at the time prescribed by Rule 10.04, subd. 1 for making pretrial motions (3 days before the Omnibus Hearing (Rule 11)) and shall be heard at that hearing unless the court for good cause orders otherwise. As to when jeopardy attaches, see comment to Rule 25.02.*~~ ~~*Rule 24.03, subd. 4 (Proceedings on Transfer) is taken from F.R.Crim.P. 21(c) and Minn. Stat. § 627.03 (1971). It further provides that unless the supreme court orders otherwise it shall be tried before the judge who ordered the change of venue. The rule does not change Minn. Stat. § 627.02 (1971) governing the payment of costs. If the defendant has been released upon conditions of release, those conditions shall be continued, conditioned upon appearance for trial in the county to which venue has been transferred as ordered by the court. This provision takes the place of Minn. Stat. § 627.03 (1971).*~~	

Proposed Revisions to Minn. R. Crim. P. 25

Original Language Showing Markup	Proposed Revised Language
Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity ~~The following rules shall govern when any question of potentially prejudicial publicity is raised:~~	**Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity**
Rule 25.01 Pretrial Hearings--Motion to Exclude Public The following rules ~~shall~~ govern ~~the issuance of any court~~ orders excluding the public from any pretrial hearing and restricting access to the orders or to ~~any~~ transcripts ~~or orders developed from such closed pretrial hearings~~of the closed proceeding. **Subd. 1. Grounds for Exclusion of Public.** ~~All pretrial hearings shall be open to the public. However, all or~~Any part of ~~such~~a pretrial hearing may be closed to the public on motion of ~~the defendant or the prosecuting attorney~~any party or ~~on~~ the court's initiative on the ground that dissemination of evidence or argument ~~adduced~~presented at the hearing may interfere with an overriding interest, including ~~that it may disclose matters that may be~~disclosure of inadmissible ~~in~~ evidence ~~at the trial~~ and ~~likely to interfere with~~the right to a fair trial ~~by an impartial jury~~. ~~The motion shall not be granted unless the court determines that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing the hearing and the closure shall be no broader than is necessary to protect the overriding interest involved.~~ **Subd. 2. Notice to Adverse Counsel.** If~~,~~ ~~prior to trial, counsel for either the prosecution or the defense~~any party has evidence that ~~counsel believes~~ may be ~~the~~ subject ~~of~~to ~~an exclusionary~~a closure order, ~~counsel has a duty first to~~the party must advise opposing counsel ~~of that fact and suggest that both counsel~~and request a closed meeting ~~privately~~ with ~~the presiding judge in closed~~counsel and the court ~~and disclose to the~~	**Rule 25.01 Pretrial Hearings--Motion to Exclude Public** The following rules govern orders excluding the public from any pretrial hearing and restricting access to the orders or to transcripts of the closed proceeding. **Subd. 1. Grounds for Exclusion of Public.** Any part of a pretrial hearing may be closed to the public on motion of any party or the court's initiative on the ground that dissemination of evidence or argument presented at the hearing may interfere with an overriding interest, including disclosure of inadmissible evidence and the right to a fair trial. **Subd. 2. Notice to Adverse Counsel.** If any party has evidence that may be subject to a closure order, the party must advise opposing counsel and request a closed meeting with counsel and the court.

~~court the problem~~. ~~If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court.~~	
Subd. 3. Meeting in Closed Court and Notice of Hearing.	**Subd. 3. Meeting in Closed Court and Notice of Hearing.**
In closed court, the court ~~shall~~must review the evidence ~~outlined by counsel~~ that ~~may~~could be the subject of a restrictive order. The court must consider alternatives to closure. Any closure must be no broader than necessary to protect the overriding interest. If the court ~~feels that any of the proffered evidence may properly be the subject for a restrictive order~~finds restriction appropriate, the court ~~shall immediately docket a notice of~~must schedule a hearing on ~~a motion for a~~the potential restrictive order~~ made by either counsel or by the court~~. ~~Such~~A hearing notice ~~shall~~must be ~~docketed~~issued publicly at least 24 hours before the hearing and ~~shall be reasonably calculated to~~must afford the public and the news media ~~with~~ an opportunity to be heard on whether the claimed overriding interest~~ claimed~~ justifies ~~closing the hearing to the public and the news media~~closure.	In closed court, the court must review the evidence that could be the subject of a restrictive order. The court must consider alternatives to closure. Any closure must be no broader than necessary to protect the overriding interest. If the court finds restriction appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard on whether the claimed overriding interest justifies closure.
Subd. 4. Hearing. At the hearing, ~~held pursuant to such notice,~~ the ~~trial~~ court ~~shall~~must advise all present that evidence exists ~~has been disclosed to it~~ that may be the subject of a closure order. ~~and shall give~~The court must allow the public, including reporters, ~~and the news media an opportunity~~ to suggest ~~any~~ alternatives to a restrictive order.	**Subd. 4. Hearing.** At the hearing, the court must advise all present that evidence exists that may be the subject of a closure order. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.
Subd. 5. Findings ~~of Fact~~. ~~No exclusion~~Any order ~~shall issue without the court setting forth the reasons therefor in written findings of fact~~excluding the public from a pretrial hearing must be issued in writing and state the reasons for closure. ~~Such findings~~The order must ~~include a review of~~address any possible alternatives to closure and ~~a statement of~~explain why the ~~court believes such~~ alternatives are inadequate. Any matter ~~to be decided which~~ relevant to the court's decision that does not present the risk of revealing inadmissible, prejudicial information ~~shall~~must be decided on the record in open~~ly~~ court ~~and on the record~~.	**Subd. 5. Findings.** Any order excluding the public from a pretrial hearing must be issued in writing and state the reasons for closure. The order must address any possible alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not present the risk of revealing inadmissible, prejudicial information must be decided on the record in open court.
Subd. 6. Records. ~~Whenever under this rule~~	**Subd. 6. Records.** If the court closes all or

If the court closes all or part of a~~ny~~ pretrial hearing ~~is closed to the public~~, a complete record of ~~those~~the non-public proceedings ~~shall~~must be made. ~~and upon~~On request, the record ~~shall~~must be transcribed and filed at public expense. ~~and filed and shall~~The record must be publicly available ~~to the public following the completion of the~~after trial or disposition of the case ~~without trial~~. ~~For the protection of innocent persons, the~~The court may ~~order that names be deleted or substitutions~~redact or substitute names ~~made therefor~~ in the record to protect innocent persons.	part of a pretrial hearing, a complete record of the non-public proceedings must be made. On request, the record must be transcribed and filed at public expense. The record must be publicly available after trial or disposition of the case. The court may redact or substitute names in the record to protect innocent persons.
Subd. 7. Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying ~~an exclusion or restrictive order under this rule~~public access may petition the Court of Appeals for review.~~, which shall be~~This is the exclusive method for obtaining review.	**Subd. 7. Appellate Review.** Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.
The Court of Appeals ~~shall~~must determine ~~upon the hearing record~~ whether the ~~moving~~ party who moved for public exclusion ~~sustained~~met the burden of justifying ~~the order under the conditions specified~~exclusion under ~~in~~ this rule~~,~~. ~~and~~The Court of Appeals may reverse, affirm, or modify the district court's order~~ issued~~.	The Court of Appeals must determine whether the party who moved for public exclusion met the burden of justifying exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.
Rule 25.02 Continuance or Change of Venue	**Rule 25.02 Continuance or Change of Venue**
This rule governs a~~A~~ motion for continuance or change of venue because of prejudicial publicity ~~shall be governed by the following rules.~~:	This rule governs a motion for continuance or change of venue because of prejudicial publicity.
Subd. 1. ~~At Whose Instance~~How Obtained. A continuance or change of venue may be granted on motion of ~~either the prosecution or the defense~~any party or on the court's initiative.	**Subd. 1. How Obtained.** A continuance or change of venue may be granted on motion of any party or on the court's initiative.
Subd. 2. Methods of Proof. ~~In addition to the testimony or affidavits of individuals in the community, which shall not be required as a condition of the granting of a motion for continuance or change of venue, qualified public opinion surveys shall be admissible as well as other materials having probative value.~~The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:	**Subd. 2. Methods of Proof.** The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:
(a) Testimony or affidavits from individuals in	(a) Testimony or affidavits from individuals in

the community; (b) Qualified public opinion surveys; or (c) Other material having probative value. Testimony or affidavits from individuals in the community must not be required as a condition for granting the motion.	the community; (b) Qualified public opinion surveys; or (c) Other material having probative value. Testimony or affidavits from individuals in the community must not be required as a condition for granting the motion.
Subd. 3. Standards for Granting the Motion. A motion for continuance or change of venue ~~shall~~ must be granted whenever ~~it is determined that the dissemination of~~ potentially prejudicial material creates a reasonable likelihood that ~~in the absence of such relief,~~ a fair trial cannot be had. ~~A showing of~~ A~~a~~ctual prejudice ~~shall~~ need not be shown~~required~~.	**Subd. 3. Standards for Granting the Motion.** A motion for continuance or change of venue must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown.
Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion ~~shall~~ must be determined before the jury is sworn. ~~If~~ A~~a~~ motion ~~is made~~ or ~~if~~ reconsideration of a prior denial ~~is sought, it~~ may be granted even ~~notwithstanding the fact that a jury has been sworn to try the case~~after a jury has been sworn.	**Subd. 4. Time of Disposition.** If a motion for continuance or change of venue is made before the jury is sworn, the motion must be determined before the jury is sworn. A motion or reconsideration of a prior denial may be granted even after a jury has been sworn.
Subd. 5. Limitations; Waiver. ~~It shall not be ground for denial of a~~The court may grant more than one change of venue ~~that one such change has already been granted~~. The waiver of ~~the right to trial by~~a jury or the failure to exercise all available peremptory challenges ~~shall~~does not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made	**Subd. 5. Limitations; Waiver.** The court may grant more than one change of venue. The waiver of a jury or the failure to exercise all available peremptory challenges does not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.
Rule 25.03 Restrictive Orders	**Rule 25.03 Restrictive Orders**
Subd. 1. Scope. Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04, ~~the following~~this rule ~~shall~~ govern~~s~~ the issuance of any court order restricting public access to public records relating to a criminal proceeding~~:~~.	**Subd. 1. Scope**. Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04, this rule governs the issuance of any court order restricting public access to public records relating to a criminal proceeding.
Subd. 2~~1~~. Motion and Notice.	**Subd. 2. Motion and Notice.**
(a) A restrictive order may be issued only ~~up~~on motion and after notice and hearing. (b) Notice of the hearing ~~shall~~ must be given in the time and manner and to ~~such~~ interested persons, including the news media, as the court may direct~~,~~	(a) A restrictive order may be issued only on motion and after notice and hearing. (b) Notice of the hearing must be given in the time and manner and to interested persons, including the news media, as the court may direct.

~~provided that the~~The notice ~~shall~~ must be ~~docketed~~issued publicly at least 24 hours before the hearing and ~~shall~~ must ~~be reasonably calculated to~~ afford the public and the news media ~~with~~ an opportunity to be heard ~~on the matter~~.	The notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard.
Subd. ~~2~~3. Hearing.	**Subd. 3. Hearing.**
(a) At the hearing, the moving party ~~shall have~~has the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. ~~3~~4. (b) The public and news media ~~shall~~ have a right to be represented ~~at the hearing~~ and to present evidence and arguments in support of or in opposition to the motion, and to suggest any alternatives to the restrictive order. (c) A verbatim record ~~shall~~ of the hearing must be made ~~of the hearing~~.	(a) At the hearing, the moving party has the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 4. (b) The public and news media have a right to be represented and to present evidence and arguments in support of or in opposition to the motion, and to suggest any alternatives to the restrictive order. (c) A verbatim record of the hearing must be made.
Subd. ~~3~~4. Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes ~~on the basis of the evidence presented at the hearing~~ that:	**Subd. 4. Grounds for Restrictive Order.** The court may issue a restrictive order under this rule only if the court concludes that:
(a) Access to ~~such~~ public records will present a substantial likelihood of interfering with the fair and impartial administration of justice. (b) All reasonable alternatives to ~~the~~ a restrictive order are inadequate.	(a) Access to public records will present a substantial likelihood of interfering with the fair and impartial administration of justice. (b) All reasonable alternatives to a restrictive order are inadequate.
~~The~~ A restrictive order must~~shall~~ be no broader than ~~is~~ necessary to protect against the potential interference with the fair and impartial administration of justice.	A restrictive order must be no broader than necessary to protect against the potential interference with the fair and impartial administration of justice.
Subd. ~~4~~5. Findings of Fact. The Court ~~shall~~ must make written findings of the facts and ~~statement of the~~ reasons supporting the conclusions ~~up~~on which an order granting or denying the motion is based. If ~~the~~ a restrictive order is granted, the ~~findings of fact~~ order must~~shall~~ ~~include a review of the~~address possible alternatives to the restrictive order and ~~a statement of~~explain why the ~~Court believes such~~ alternatives ~~to be~~are inadequate.	**Subd. 5. Findings of Fact.** The Court must make written findings of the facts and reasons supporting the conclusions on which an order granting or denying the motion is based. If a restrictive order is granted, the order must address possible alternatives to the restrictive order and explain why the alternatives are inadequate.
Subd. ~~5~~6. Appellate Review.	**Subd. 6. Appellate Review.**
(a) Anyone ~~represented at the hearing or~~ aggrieved by an order granting or denying a	(a) Anyone aggrieved by an order granting or denying a restrictive order may petition the Court

restrictive order may petition the Court of Appeals for review.~~, which shall be~~This is the exclusive method for obtaining review.

(b) The Court of Appeals ~~shall~~ must determine ~~upon the hearing record~~ whether the moving party ~~sustained~~ met the burden of justifying the restrictive order under the conditions specified in subd. ~~3~~4 ~~of this rule.~~, ~~and the~~The Court of Appeals may reverse, affirm, or modify the district court's order ~~issued~~.

Comment—Rule 25

~~*This rule prescribes special rules to be applied in the case of potentially prejudicial publicity. Other applicable rules when this question arises are Rules 26.01, subd. 1(2)(b) (Waiver of Jury Trial); 26.02, subd. 4(2)(b) (Sequestration of Jurors on Voir Dire); 26.03, subd. 3 (Use of Courtroom); 26.03, subd. 5(1) (Sequestration of Jury); 26.03, subd. 6 (Exclusion of Public from Hearings or Arguments Outside Presence of the Jury); 26.03, subd. 7 (Cautioning Parties, Witnesses, Jurors, and Judicial Employees; Sequestration of Witnesses); 26.03, subd. 8 (Admonitions to Jurors); and 26.03, subd. 9 (Questioning Jurors about Exposure to Prejudicial Material). See also Comment to Rule 26.04 (Post-Verdict Motions).*~~

The Rules of Public Access to Records of the Judicial Branch~~, effective July 1, 1988,~~ generally govern access to case records of all judicial courts. However, Rule 4, subd. 1(d) and Rule 4, subd. 2 of those rules provide that the Rules of Criminal Procedure ~~shall~~ govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records.~~ As to those restrictions see Rule 25.01 (pretrial hearing closure); Rule 25.03 (restricting access to public records relating to a criminal proceeding); Rule 26.03, subd. 6 (exclusion from proceedings outside the hearing of the jury); and Rule 33.04 (delay in filing of complaint, indictment, application, or affidavit requesting a warrant).~~

Rule 25.01 (~~Pretrial Hearings~~ Motion to Exclude Public) setting forth the procedure and standard for excluding the public from pretrial hearings is based on Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn.1983). For a defendant an overriding interest includes interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument presented at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39 (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

of Appeals for review. This is the exclusive method for obtaining review.

(b) The Court of Appeals must determine whether the moving party met the burden of justifying the restrictive order under the conditions specified in subd. 3. The Court of Appeals may reverse, affirm, or modify the district court's order.

Comment—Rule 25

The Rules of Public Access to Records of the Judicial Branch generally govern access to case records of all judicial courts. However, Rule 4, subd. 1(d) and Rule 4, subd. 2 of those rules provide that the Rules of Criminal Procedure govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records.

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This rule does not interfere with the power of the court in any pretrial hearing to caution those present that dissemination of certain information

(Minn.1983). ~~The motion to exclude the public from pretrial hearings under this rule shall not be granted unless the court determines that there is a substantial likelihood of interference with an overriding interest.~~ For a defendant ~~that would~~an overriding interest includes interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument presented ~~adduced~~ at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39~~, 104 S.Ct. 2210, 81 L.Ed.2d 31~~ (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501~~, 104 S.Ct. 819, 78 L.Ed.2d 629~~ (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596~~, 102 S.Ct. 2613, 73 L.Ed.2d 248~~ (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

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

~~—~~This rule does not interfere with the power of the court in any pretrial hearing to caution those present that dissemination of certain information by means of public communication may jeopardize the right to a fair trial by an impartial jury.

~~Rule 25.02. Motion for Continuance or Change of Venue.~~

~~— Rule 25.02, subd. 1 and subd. 2 (At Whose Instance; Methods of Proof) are taken from ABA Standards, Fair Trial and Free Press, 3.2(a)(b) (Approved Draft, 1968). Rule 25.02, subd. 3 (Standards for Granting the Motion) is based upon ABA Standards, Fair Trial and Free Press 3.2(c) (Approved Draft, 1968). The determination that there is a reasonable likelihood a fair trial cannot by means of public communication may jeopardize the right to a fair trial by an impartial jury.

The procedure in Rule 25.03 is based upon Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn.1983) and Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254 (Minn.1977). Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case.

Possible alternatives to a restrictive order indicated in Rule 25.03, subd. 3(b) are the following:

- *a continuance or change of venue under Rule 25.02;*
- *sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b);*
- *regulation of use of the courtroom under Rule 26.03, subd. 3;*
- *sequestration of jury under Rule 26.03, subd. 5(1);*
- *exclusion of the public from hearings or arguments outside the presence of the jury under Rule 26.03, subd. 6;*
- *cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subd. 7;*
- *admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.*

~~*be had may be based on such evidence as qualified public opinion surveys or opinion testimony offered by individuals, or on the court's own evaluation of the nature, frequency, and timing of the prejudicial material involved. Rule 25.02, subd. 4 (Time of Disposition of Motion) is based on ABA Standards, Fair Trial and Free Press, 3.2(d) (Approved Draft, 1968). A motion for continuance or change of venue should, if possible, be made at the time prescribed by Rule 10 for pretrial motions and heard at the Omnibus Hearing under Rule 11.*~~

~~*Under Rule 25.02, subd. 4, the motion may be made before the jury is sworn and in that event should be determined before the jury is sworn. If a motion is made or reconsideration of a prior denial is sought, however, it may be granted after the jury is sworn. Since the Fifth Amendment's double jeopardy provisions are applicable to the states [Benton v. Maryland, 89 S.Ct. 2056, 395 U.S. 784, 23 L.Ed.2d 707 (1969)], jeopardy attaches in a jury case when the jury is sworn and in a court trial when the first evidence is presented to the court. See Minn. Stat. § 611A.033 regarding the prosecutor's duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of any continuance of the proceedings.*~~

~~*Rule 25.02, subd. 5 (Limitations; Waiver) is taken from ABA Standards, Fair Trial and Free Press, 3.2(c) (Approved Draft, 1968) and expressly permits more than one change of venue. (This changes Minn. Stat. § 627.01 which allows the defendant only one change of venue.)*~~

~~*It is anticipated that Rule 25.03 will be utilized only "in exceptional cases" involving serious crimes. See Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254, 257, and note 7 (Minn.1977).*~~ *The procedure* ~~*required by*~~*in* ~~*this r*~~*Rule* *25.03* *is based upon Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550 (Minn.1983)* ~~*as well as*~~*and Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254 (Minn.1977).* ~~*A restrictive order may be issued under Rule 25.03 only if the Court finds that access to the records will present a substantial likelihood of interfering with the fair and impartial administration of justice. This standard is similar to that provided by Rule 25.01 governing closure of pretrial hearings and Rule 26.03, subd. 6 governing closure of trial proceedings. A more restrictive standard*~~

~~governing access to such records would be anomalous in light of Rule 25.01 and Rule 26.03, subd. 6.~~ Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case. ~~This is in accord with ABA Standards, Fair Trial and Free Press, 8-3.1 (Approved Draft, 1982) which recommends that no rule of court be promulgated authorizing any such restrictions. The requirement in Rule 25.03, subd. 3 that any restrictive order be no broader than necessary is taken from Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).~~ *Possible alternatives to a restrictive order indicated in Rule 25.03, subd. 3(b) are the following:* • ~~A~~a *continuance or change of venue under Rule 25.02;* • *sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b);* • *regulation of use of the courtroom under Rule 26.03, subd. 3;* • *sequestration of jury under Rule 26.03, subd. 5(1);* • *exclusion of the public from hearings or arguments outside the presence of the jury under Rule 26.03, subd. 6;* • *cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subd. 7;* • *admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.*	

Proposed Revisions to Minn. R. Crim. P. 26

Original Language Showing Markup	Proposed Revised Language
Rule 26.01 Trial by Jury or by the Court Subd. 1. Trial by Jury. (1) Right to Jury Trial. (a) Offenses Punishable by Incarceration. A defendant ~~shall be entitled~~has a right to a jury trial ~~in any prosecution~~ for ~~an~~any offense punishable by incarceration. All trials ~~shall~~must be in the district court. (b) Misdemeanors Not Punishable by Incarceration. In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial ~~shall~~must be to the court. (2) Waiver of Trial by Jury. (a) Waiver on the Issue of Guilt. The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or ~~orally upon~~ the record in open court, after being advised by the court of the right to trial by jury, and after having had an opportunity to consult with counsel. (b) Waiver on the Issue of an Aggravated Sentence. Where the prosecutor seeks an aggravated sentence ~~is sought by the prosecution~~, the defendant, with the approval of the court, may waive a jury trial on the facts in support of an aggravated sentence provided the defendant does so personally, in writing or ~~orally upon~~ the record in open court, after being advised by the court of the right to a trial by jury, and after having had an opportunity to consult with counsel. (c) Waiver ~~When~~Necessitated by Prejudicial Publicity. The defendant ~~shall~~must be permitted to waive a jury trial whenever ~~it is determined that~~the court determines: (i~~a~~) the ~~waiver has been~~defendant knowingly and voluntarily ~~made~~waived that right~~,~~; and (ii~~b~~) ~~there is~~ reason exists to believe that, ~~as the result of~~ because of the dissemination of potentially prejudicial material, the waiver ~~is required~~must be granted to assure ~~the likelihood of~~ a fair trial. (3) Withdrawal of Jury-Trial Waiver~~ of Jury Trial~~. The defendant may withdraw the	**Rule 26.01 Trial by Jury or by the Court** Subd. 1. Trial by Jury. (1) Right to Jury Trial. (a) Offenses Punishable by Incarceration. A defendant has a right to a jury trial for any offense punishable by incarceration. All trials must be in the district court. (b) Misdemeanors Not Punishable by Incarceration. In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial must be to the court. (2) Waiver of Trial by Jury. (a) Waiver on the Issue of Guilt. The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to trial by jury, and after having had an opportunity to consult with counsel. (b) Waiver on the Issue of an Aggravated Sentence. Where the prosecutor seeks an aggravated sentence, the defendant, with the approval of the court, may waive a jury trial on the facts in support of an aggravated sentence provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to a trial by jury, and after having had an opportunity to consult with counsel. (c) Waiver Necessitated by Prejudicial Publicity. The defendant must be permitted to waive a jury trial whenever the court determines: (i) the defendant knowingly and voluntarily waived that right; and (ii) reason exists to believe that, because of the dissemination of potentially prejudicial material, the waiver must be granted to assure a fair trial. (3) Withdrawal of Jury-Trial Waiver. The defendant may withdraw the waiver of a jury trial

waiverWaiver of a jury trial may be withdrawn by the defendant at any time before the commencement of trial begins.	any time before trial begins.
(4) Waiver of Number of Jurors Required by Law. At anyAny time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of a lesser number of jurors fewer than that provided by law. The court shallmust not approve such athis stipulation unless the defendant, personally in writing or the record in open court, agrees to trial by a reduced jury after being advised by the court of the right to trial by a jury consisting of the number of jurors provided by law, personally in writing or orally on the record in open court agrees to trial by such reduced jury.	(4) Waiver of Number of Jurors Required by Law. Any time before verdict, the parties, with the approval of the court, may stipulate that the jury consist of a number of jurors fewer than that provided by law. The court must not approve this stipulation unless the defendant, personally in writing or the record in open court, agrees to trial by a reduced jury after being advised by the court of the right to trial by a jury consisting of the number of jurors provided by law.
(5) Number Required for Verdict. AThe jury's verdict must be unanimous verdict shall be required in all cases.	(5) Number Required for Verdict. The jury's verdict must be unanimous in all cases.
(6) Waiver of Unanimous Verdict. At anyAny time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors lessfewer than that required by law or these rules. The court shallmust not approve such athis stipulation unless the defendant waives this right personally in writing or on the record, after being advised by the court of the right to a verdict on the concurrence of the number of jurors specified by law, personally in writing or orally on the record waives the right to such a verdict.	(6) Waiver of Unanimous Verdict. Any time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors fewer than that required by law or these rules. The court must not approve this stipulation unless the defendant waives this right personally in writing or on the record, after being advised by the court of the right to a verdict on the concurrence of the number of jurors specified by law.
Subd. 2. Trial Without a Jury.	Subd. 2. Trial Without a Jury.
(a) In a case tried without a jury, the court, within 7 days after the completion of the trial, shallmust make a general finding of guilty;, not guilty;, or if suchthe applicable pleas have been made, a general finding of not guilty by reason of mental illness or mental deficiency, double jeopardy, or that prosecution is barred by Minn. Stat. § 609.035 bars the prosecution (1971), if appropriate.	(a) In a case tried without a jury, the court, within 7 days after the completion of the trial, must make a general finding of guilty; not guilty; or if the applicable pleas have been made, a general finding of not guilty by reason of mental illness or deficiency, double jeopardy, or that Minn. Stat. § 609.035 bars the prosecution.
(b) The court, within 7 days after making its the general finding in felony and gross misdemeanor cases, shallmust in addition specificallymake findings in writing of the essential facts in writing on the record.	(b) The court, within 7 days after making its general finding in felony and gross misdemeanor cases, must in addition make findings in writing of the essential facts.
(c) In misdemeanor and petty misdemeanor cases, such findings shallmust be made within 7 days after the defendant has filed afiling of the	(c) In misdemeanor and petty misdemeanor cases, findings must be made within 7 days after the defendant has filed a notice of appeal.

notice of appeal. (d) ~~If an~~An opinion or memorandum of decision ~~is~~ filed by the court~~, it is sufficient~~ satisfies the requirement to find the essential facts if ~~the findings of fact~~they appear ~~therein~~in the opinion or memorandum. (e) If the court omits a finding on any issue of fact essential to sustain the general finding, it ~~shall~~must be deemed to have made a finding consistent with the general finding.	(d) An opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum. (e) If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.
Subd. 3. Trial on Stipulated Facts. (a) ~~By agreement of the~~The defendant and the ~~prosecuting attorney,~~prosecutor may agree that a determination of 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 on stipulated facts. Before proceeding~~ in this manner~~, the defendant ~~shall~~ must acknowledge and personally waive the rights to: • testify at trial~~,~~; • ~~to~~ have the prosecution witnesses testify in open court in the defendant's presence~~,~~; • ~~to~~ question those prosecution witnesses~~,~~; and • ~~to~~ require any favorable witnesses to testify for the defense in court.	Subd. 3. Trial on Stipulated Facts. (a) The defendant and the prosecutor may agree that a determination of 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 on stipulated facts. Before proceeding, the defendant must acknowledge and personally waive the rights to: • testify at trial; • have the prosecution witnesses testify in open court in the defendant's presence; • question those prosecution witnesses; and • require any favorable witnesses to testify for the defense in court.
(b) The agreement and the waiver ~~shall~~must be in writing or be placed ~~orally~~ on the record.	(b) The agreement and the waiver must be in writing or be placed on the record.
(c) If ~~this~~ the parties use this procedure ~~is utilized for determination of~~to determine the issues of the defendant's guilt, and the existence of facts to support an aggravated sentence, ~~there shall be~~ the defendant must make a separate waiver of the above-listed rights as to each issue.	(c) 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) ~~Upon~~On submission of the case on stipulated facts, the court ~~shall~~must proceed under subdivision 2 of this rule as ~~on~~ in any other trial to the court ~~pursuant to subdivision 2 of this rule~~.	(d) On submission of the case on stipulated facts, the court must proceed under subdivision 2 of this rule as in any other trial to the court.
(e) If the court finds the defendant ~~is found~~ guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal ~~the same~~ as from any trial to the court.	(e) If the court finds the defendant guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.
Subd. 4. Stipulation to Prosecution's Case to	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 ~~otherwise~~ makes a contested trial unnecessary, the following procedure ~~shall~~must be used to preserve the issue for appellate review. (b) The defendant ~~shall~~must maintain the plea of not guilty. (c) The defendant and ~~the prosecuting attorney~~ prosecutor ~~shall~~must acknowledge that the pretrial issue is dispositive, or that a trial will ~~otherwise~~ be unnecessary if the defendant prevails on appeal. (d) The defendant, after an opportunity to consult with counsel, ~~shall~~must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), and ~~shall~~must also waive the rights specified in Rule 26.01, subdivision 3(a). (e) The defendant ~~shall~~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 ~~find the defendant guilty~~enter a finding of guilt based on that evidence. (f) The defendant ~~shall~~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 ~~prosecuting attorney~~prosecutor must make the ~~foregoing~~preceding acknowledgments personally, in writing or ~~orally~~ on the record. (h) ~~The court a~~After consideration of the stipulated evidence, the court ~~shall~~must make an appropriate finding, and if that finding is guilty, the court ~~shall~~must also make findings of fact~~, orally~~ on the record or in writing~~,~~ as to each element of the offense(s).	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 waive the rights specified in Rule 26.01, subdivision 3(a). (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).
Rule 26.02 ~~Selection of Jury~~Jury Selection Subd. 1. Jury List. Selection and Qualifications. The jury list ~~shall~~must be composed of ~~the names of~~ persons ~~selected at~~ randomly selected from a fair cross-section of ~~the~~qualified county residents~~ of the county who are qualified by law to serve as jurors and shall otherwise be selected as provided by law~~. The jury ~~shall~~must be drawn from the jury list~~ and summoned, as prescribed by law~~.	**Rule 26.02 Jury Selection** Subd. 1. Jury List. Selection and Qualifications. The jury list must be composed of persons randomly selected from a fair cross-section of qualified county residents. The jury must be drawn from the jury list.

Subd. 2. Juror Information.	Subd. 2. Juror Information.
(1) ~~List of~~ Prospective Juror Lists~~.~~ ~~Upon request the clerk of court shall~~The court administrator must furnish the parties ~~with~~ a list of ~~the~~prospective jurors' names~~,~~ ~~and~~ addresses~~,~~ ~~of the persons on the jury panel~~ and ~~such~~ other information~~,~~ ~~as the clerk of court has obtained from the prospective jurors,~~ unless ~~otherwise ordered by~~ the ~~trial~~ court orders otherwise after a hearing ~~in accordance with this rule.~~	(1) Prospective Juror List. The court administrator must furnish the parties a list of prospective jurors' names, addresses, and other information, unless the court orders otherwise after a hearing.
(2) Anonymous Jurors. ~~Upon the~~On any party's motion~~,~~ ~~of a party that there is a special need to~~the court may restrict ~~the parties'~~ access to prospective and selected jurors' names, addresses, ~~telephone numbers,~~ and other identifying information ~~of prospective and selected jurors, the court shall hold a hearing on the motion. The court may order that the parties' and the public's access to this information about the prospective jurors be restricted only~~ if ~~it determines that in the individual case there is~~ a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality. ~~The court order may restrict access to such information during jury selection, trial and later for so long as such protection is necessary. Jurors and prospective jurors may be identified by number or by other method that protects their identity. If the court restricts access to this information, the court must also take reasonable precautions to minimize any possible prejudicial effect the restriction on access to this information might have on the defendant or the state.~~ The court ~~shall~~must hold a hearing on the motion and make ~~clear and~~ detailed findings of fact ~~in writing or on the record in open court~~ supporting its ~~determination that the restriction on~~decision to restrict access to juror information~~about the prospective and selected jurors is necessary for their safety or impartiality~~. 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.	(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. ~~As~~On the request of a party or on its own initiative, the court may order use of a jury questionnaire as a supplement to ~~oral~~ voir dire~~, a sworn jury~~. The questionnaire ~~designed for use in criminal cases may be used to obtain information helpful to the parties and~~must be approved by the court ~~in jury selection before the jurors are called into court for examination~~. The court ~~may on its own initiative or on request of counsel include in the questionnaire additional questions that may elicit~~must tell prospective jurors that ~~sensitive information. If~~if sensitive or embarrassing questions are included on the questionnaire, ~~the prospective jurors shall be advised that~~ instead of answering any particular ~~sensitive~~ 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~~ir~~ answers ~~to any particular sensitive questions~~ not be public. When ~~such a request is made by~~ a prospective juror asks to address the court in camera, the court ~~shall~~must proceed under Rule 26.02, subd. 4(4) and decide whether the particular ~~sensitive~~ questions may be answered during oral voir dire with the public excluded. ~~Court personnel may hand out the questionnaire to the prospective jurors and collect them when completed.~~ The court ~~shall~~must make the completed questionnaires available to counsel.	(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.
Subd. 3. Challenge to Panel. ~~Either~~Any party may challenge the jury panel ~~on the ground that there has been~~if a material departure from ~~the requirements of~~ law ~~governing the selection,~~has occurred in drawing or summoning ~~of the~~ jurors. The challenge ~~shall~~must be made in writing~~, specifying the facts constituting the grounds of the challenge,~~ and ~~shall be made~~ before the court swears in the~~a~~ jury ~~is sworn~~. The challenge must specify grounds. ~~If the opposing party objects to either~~The court must conduct a hearing to determine the sufficiency of the challenge ~~or the facts on which it is based, the court shall hear and determine the challenge~~.	Subd. 3. Challenge to Panel. Any party may challenge the jury panel if a material departure from law has occurred in drawing or summoning jurors. The challenge must be made in writing and before the court swears in the jury. The challenge must specify grounds. The court must conduct a hearing to determine the sufficiency of the challenge.
Subd. 4. Voir Dire Examination.	Subd. 4. Voir Dire Examination.
(1) Purpose--~~By Whom~~How Made. The court must allow the parties to conduct ~~A~~ voir dire examination ~~shall be conducted for the purpose of discovering bases~~to discover grounds for	(1) Purpose--How Made. The court must allow the parties to conduct voir dire examination to discover grounds for challenges for cause and to

challenges for cause and ~~for the purpose of gaining knowledge to enable an informed exercise of~~to assist in the exercise of peremptory challenges.~~,~~ ~~and shall~~The examination must be open to the public ~~except upon order of the court as provided by~~unless otherwise ordered under Rule 26.02, subd. 4(4). The court ~~judge shall~~ must begin ~~initiate the voir dire examination~~ by identifying the parties and their respective counsel and by ~~briefly~~ outlining the nature of the case. The court ~~judge shall then put to the prospective juror or jurors any questions which the judge thinks necessary touching~~must question jurors about their qualifications to serve ~~as jurors in the case on trial~~ and may give the ~~such~~ preliminary instructions ~~as are set forth~~ in Rule 26.03, subd. 4. ~~Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case.~~ A verbatim record of the voir dire examination ~~shall~~ must be made at any party's ~~the~~ request ~~of either party~~.	assist in the exercise of peremptory challenges. The examination must be open to the public unless otherwise ordered under Rule 26.02, subd. 4(4). The court must begin by identifying the parties and their respective counsel and by outlining the nature of the case. The court must question jurors about their qualifications to serve and may give the preliminary instructions in Rule 26.03, subd. 4. A verbatim record of the voir dire examination must be made at any party's request.
(2) Sequestration of Jurors. (a) Court's Discretion. ~~In the discretion of the court the~~The court may order that the examination of each juror ~~may~~ take place outside of the presence of other chosen and prospective jurors.	(2) Sequestration of Jurors. (a) Court's Discretion. The court may order that the examination of each juror take place outside of the presence of other chosen and prospective jurors.
(b) Prejudicial Publicity. Whenever ~~there is~~ a significant possibility ~~that individual jurors will be ineligible to serve because~~exists of exposure to prejudicial material, the examination of each juror with respect to the juror's exposure ~~shall~~must take place outside the presence of other ~~chosen and~~ prospective and selected jurors.	(b) Prejudicial Publicity. Whenever a significant possibility exists of exposure to prejudicial material, the examination of each juror with respect to the juror's exposure must take place outside the presence of other prospective and selected jurors.
(3) Order of Drawing, Examination, and Challenge.	(3) Order of Drawing, Examination, and Challenge.
(a) Jury Selection Methods. Three methods exist for selecting a jury: (i) the preferred method found in paragraph (b), in which the parties make peremptory challenges at the end of voir dire; (ii) the alternate method found in paragraph (c), in which a party exercises any peremptory challenge after questioning the prospective juror; (iii) the preferred method for first-degree murder cases found in paragraph (d), in which	(a) Jury Selection Methods. Three methods exist for selecting a jury: (i) the preferred method found in paragraph (b), in which the parties make peremptory challenges at the end of voir dire; (ii) the alternate method found in paragraph (c), in which a party exercises any peremptory challenge after questioning the prospective juror; (iii) the preferred method for first-degree murder cases found in paragraph (d), in which

each party questions the prospective juror out of the hearing of the other prospective and selected jurors.	each party questions the prospective juror out of the hearing of the other prospective and selected jurors.
(~~a~~b) ~~Uniform Rule~~Preferred Method; Cases Other Than First-Degree Murder. ~~Except as provided by Rule 26.02, subd. 4(3)(c)8 with respect to cases of first degree murder, unless the court orders that the jurors shall be drawn, examined and challenged as provided either by Rule 26.02, subd. 4(3)(b) or (c), they shall be drawn, examined and challenged as follows:~~	(b) Preferred Method; Cases Other Than First-Degree Murder.
~~1.~~(i) The court ~~shall first direct that such a number of the members of the~~must draw ~~jury panel be drawn and called as will equal the~~ prospective jurors comprising the number of ~~which the jury shall be composed for trial of the case plus the~~jurors required, the number of peremptory challenges~~, available to all the parties~~ and the number of ~~any~~ alternate~~s jurors~~.	(i) The court must draw prospective jurors comprising the number of jurors required, the number of peremptory challenges, and the number of alternates.
~~2.~~(ii) The prospective jurors ~~so drawn and called shall~~must take their place in the jury box and be sworn in ~~to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case~~.	(ii) The prospective jurors must take their place in the jury box and be sworn in.
~~3.~~(iii) The prospective jurors ~~shall~~ must be examined ~~as to their qualifications~~, first by the court, then by the parties, commencing with the defendant.	(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.
~~4.~~(iv) A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause ~~shall~~ must be made, first by the defense and then by the ~~prosecution~~prosecutor.	(iv) A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause must be made, first by the defense and then by the prosecutor.
~~5.~~(v) When the court excuses a~~If any~~ prospective juror ~~is challenged and excused~~ for cause~~,~~ another ~~shall~~ must be drawn ~~from the jury panel~~ so that the number in the jury box ~~will~~ remains the same as~~equal to~~ the number initially called.	(v) When the court excuses a prospective juror for cause, another must be drawn so that the number in the jury box remains the same as the number initially called.
~~6.~~(vi) After ~~both parties have had an opportunity to~~all challenges for cause have been made, ~~each, commencing with the defendant,~~the parties may alternately exercise ~~alternately the~~ peremptory challenges ~~permitted by these rules,~~ starting with the defendant.	(vi) After all challenges for cause have been made, the parties may alternately exercise peremptory challenges, starting with the defendant.
~~7.~~(vii) ~~When the peremptory challenges have been exercised, the jury shall be selected from the~~The jury consists of the remaining panel members~~prospective jurors~~ in the	(vii) The jury consists of the remaining panel members in the order they were called.

order ~~in which~~ they were called.~~ until the number selected equals the number of which the jury shall be composed for trial of the case plus the alternate jurors, if any.~~	
(c) Alternate Method; Cases Other Than First-Degree Murder. ~~(b) By Order of Court. The court may order that the jurors be drawn, examined and challenged as provided by Rule 26.02, subd. 4(3)(b) or (c) as follows:~~	(c) Alternate Method; Cases Other Than First-Degree Murder.
~~1.~~(i) The court ~~shall first direct that such a number of the members of the~~must draw a jury panel be drawn and called as will ~~equal~~prospective jurors comprising the total of the number ~~of which the jury shall be composed for trial of the case plus~~of jurors required and the number of ~~any~~ alternate~~s jurors~~.	(i) The court must draw prospective jurors comprising the total of the number of jurors required and the number of alternates.
~~2.~~(ii) The prospective jurors ~~so drawn and called shall~~must take their place in the jury box and be sworn in ~~to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case~~.	(ii) The prospective jurors must take their place in the jury box and be sworn in.
~~3.~~(iii) The prospective jurors ~~shall~~ must be examined ~~as to their qualifications~~, first by the court, then by the parties, commencing with the defendant.	(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.
~~4.~~(iv) ~~Upon~~On completion of the defendant's examination of a prospective juror, the defendant ~~shall~~ must be permitted to exercise a challenge for cause or a peremptory challenge ~~as permitted by these rules as to that juror~~. ~~A juror who is excused shall be replaced by another member of the panel. The replacement juror shall be examined and challenged after all previously drawn jurors have been examined and challenged.~~	(iv) On completion of the defendant's examination of a prospective juror, the defendant must be permitted to exercise a challenge for cause or a peremptory challenge.
~~5.~~(v) ~~Upon~~On completion of the defendant's examination and any challenge of ~~each~~a prospective juror ~~by the defendant~~, the ~~state~~prosecutor may examine ~~such~~the prospective juror and may exercise a challenge ~~the juror~~ for cause or ~~peremptorily~~a peremptory challenge.	(v) On completion of the defendant's examination and any challenge of a prospective juror, the prosecutor may examine the prospective juror and may exercise a challenge for cause or a peremptory challenge.
(vi) An ~~juror who is~~ excused ~~shall~~prospective juror must be replaced by another. ~~member of the panel who shall be subject to examination and challenge in accordance with this rule.~~ The replacement must be examined and challenged after all previously drawn jurors have been examined and challenged.	(vi) An excused prospective juror must be replaced by another. The replacement must be examined and challenged after all previously drawn jurors have been examined and challenged.
~~6.~~(viii) This process ~~of jury selection shall~~ continues until the number of persons ~~of~~	(viii) This process continues until the number of persons who will constitute the jury, including

~~which the~~ who will constitute the jury, including the alternates, ~~shall be composed for trial of the case plus any alternate jurors is~~have been selected ~~and sworn as the trial jury~~.	the alternates, have been selected.
(~~c~~d) ~~By Order of Court~~Preferred Method; First-Degree Murder Cases. ~~1.~~(i) The court ~~shall~~must direct that one prospective juror at a time be drawn from the jury panel for examination.	(d) Preferred Method; First-Degree Murder Cases. (i) The court must direct that one prospective juror at a time be drawn from the jury panel for examination.
~~2.~~(ii) The prospective juror ~~so drawn shall~~must be sworn in~~to answer truthfully questions asked relative to the prospective juror's qualifications to serve as a juror in the case~~.	(ii) The prospective juror must be sworn in.
~~3.~~(iii) The prospective juror ~~shall~~must be examined, first by the court, ~~and~~ then by the parties, commencing with the defendant.	(iii) The prospective juror must be examined, first by the court, then by the parties, commencing with the defendant.
~~4.~~(iv) ~~Upon~~On completion of defendant's examination, the defendant may ~~challenge the juror~~ exercise a challenge for cause or ~~peremptorily as permitted by these rules~~peremptory challenge.	(iv) On completion of defendant's examination, the defendant may exercise a challenge for cause or peremptory challenge.
~~5. If the juror is excused, another prospective juror shall be drawn from the panel and shall be examined and subject to challenge in the same manner.~~	
~~6.~~(v) A prospective juror who is not excused after examination by the defendant may be examined by the state. ~~and may be challenged~~The state may exercise a challenge for cause or ~~peremptorily by the state~~peremptory challenge.	(v) A prospective juror who is not excused after examination by the defendant may be examined by the state. The state may exercise a challenge for cause or peremptory challenge.
~~7.~~(vi) This process ~~of selection shall~~must continue until the number of ~~persons of which the jury shall be composed for trial of the case is selected and sworn as the trial jury~~jurors equals the number required plus ~~the number of any~~ alternate~~s jurors~~.	(vi) This process must continue until the number of jurors equals the number required plus alternates.
~~8. In cases of first degree murder, the method provided by Rule 26.02, subd. 4(3)(c) shall be preferred unless otherwise ordered by the court.~~	
(4) Exclusion of the Public From Voir Dire. In those rare cases where it is necessary, the following rules ~~shall~~ govern ~~the issuance of any court~~ orders excluding the public from any part of ~~the~~ voir dire or restricting access to ~~such~~the orders or to transcripts of ~~any parts of the voir dire~~the closed ~~to the public~~proceeding.	(4) Exclusion of the Public From Voir Dire. In those rare cases where it is necessary, the following rules govern orders excluding the public from any part of voir dire or restricting access to the orders or to transcripts of the closed proceeding.

(a) Advisory. When it appears ~~that~~ prospective jurors ~~during voir dire~~ may be asked sensitive or embarrassing questions ~~that could be embarrassing to them~~during voir dire, the court may on its own initiative or on request of ~~the defense or the prosecution~~either party, advise the prospective jurors that they may request an opportunity to address the court in camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive or embarrassing questions are asked.	(a) Advisory. When it appears prospective jurors may be asked sensitive or embarrassing questions during voir dire, the court may on its own initiative or on request of either party, advise the prospective jurors that they may request an opportunity to address the court in camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive or embarrassing questions are asked.
(b) In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera ~~concerning exclusion of the public from voir dire~~ during sensitive or embarrassing questioning, the ~~court shall conduct an in-camera hearing on that issue~~request must be granted. The hearing must be on the record with counsel and the defendant ~~also~~ present. ~~The court shall consider at the hearing whether there are any reasonable alternatives to closing voir dire.~~	(b) In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera during sensitive or embarrassing questioning, the request must be granted. The hearing must be on the record with counsel and the defendant present.
(c) Standards. In considering the request to exclude the public during voir dire, the court ~~shall~~must balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order ~~closure of~~ voir dire closed only if it finds ~~that there is~~ a substantial likelihood that conducting ~~the~~ voir dire in open court would interfere with an overriding interest, including the defendant's ~~interest in~~right to a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. The court must consider alternatives to closure. Any closure ~~of voir dire shall~~must be no broader than ~~is~~ necessary to protect the overriding interest~~s involved~~.	(c) Standards. In considering the request to exclude the public during voir dire, the court must balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order voir dire closed only if it finds a substantial likelihood that conducting voir dire in open court would interfere with an overriding interest, including the defendant's right to a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. The court must consider alternatives to closure. Any closure must be no broader than necessary to protect the overriding interest.
(d) Refusal to Close Voir Dire. If the court determines ~~that there is~~ no overriding interest exists to justify excluding the public from voir dire, the voir dire ~~shall~~must continue in open court on the record ~~and upon request the in camera proceeding shall be transcribed and filed with the court administrator within a reasonable time~~.	(d) Refusal to Close Voir Dire. If the court determines no overriding interest exists to justify excluding the public from voir dire, the voir dire must continue in open court on the record.
(e) Closure of Voir Dire. If the court determines that an overriding interest~~s justify~~justifies closure of any part of ~~the~~ voir dire, that part of ~~the~~ voir dire ~~shall~~must be conducted in camera on the record with counsel and the	(e) Closure of Voir Dire. If the court determines that an overriding interest justifies closure of any part of voir dire, that part of voir dire must be conducted in camera on the record with counsel and the defendant present.

defendant present.	
(f) Findings of Fact. ~~No~~Any order excluding the public from ~~any~~ a part of ~~the~~ voir dire ~~shall issue without the court setting forth the reasons therefor either~~must be issued in writing or ~~orally~~ on the record. The court must set forth the reasons for the order, including findings ~~shall indicate~~as to why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open voir dire. The order must address ~~and shall also include a review of~~any possible alternatives to closure ~~and a statement of~~and explain why the ~~court believes such~~ alternatives are inadequate.	(f) Findings of Fact. Any order excluding the public from a part of voir dire must be issued in writing or on the record. The court must set forth the reasons for the order, including findings as to why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open voir dire. The order must address any possible alternatives to closure and explain why the alternatives are inadequate.
(g) Record. ~~Whenever under this rule~~ A complete record of the in camera proceedings ~~are held on a juror's request for closure or the public is excluded from any part of the voir dire, a complete record of the proceedings shall~~must be made. ~~Upon~~On request, the record ~~shall~~must be transcribed within a reasonable time and ~~shall be~~ filed with the court administrator. The transcript ~~shall~~must be publicly available ~~to the public~~, but only if ~~such~~ disclosure can be accomplished while safeguarding the overriding interests involved. The court may order ~~that~~ the transcript or any part of it ~~be~~ sealed, ~~that~~ the name of a juror ~~be~~ withheld, or parts of the transcript ~~be~~ excised if the court finds ~~that it is~~ these actions necessary ~~to do so~~ to protect the overriding interest~~s involved~~ that justified closure.	(g) Record. A complete record of the in camera proceedings must be made. On request, the record must be transcribed within a reasonable time and filed with the court administrator. The transcript must be publicly available, but only if disclosure can be accomplished while safeguarding the overriding interests involved. The court may order the transcript or any part of it sealed, the name of a juror withheld, or parts of the transcript excised if the court finds these actions necessary to protect the overriding interest that justified closure.
Subd. 5. Challenge for Cause.	Subd. 5. Challenge for Cause.
(1) Grounds. A juror may be challenged for cause ~~by either party upon~~on these ~~following~~ grounds:	(1) Grounds. A juror may be challenged for cause on these grounds:
1. The juror's ~~existence of a~~ state of mind ~~on the part of the juror,~~ – in reference to the case or to either party~~,~~ – ~~which~~ satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party ~~challenging~~.	1. The juror's state of mind – in reference to the case or to either party – satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.
2. A felony conviction unless the juror's civil rights have been restored.	2. A felony conviction unless the juror's civil rights have been restored.
3. The lack of any ~~of the~~ qualification~~s~~ prescribed by law ~~to render a person a competent juror~~.	3. The lack of any qualification prescribed by law.
4. A physical or mental ~~defect which~~disability that renders the juror incapable of performing the duties of a juror.	4. A physical or mental disability that renders the juror incapable of performing the duties of a juror.

5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.	5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.
6. Standing ~~in relation of~~as a guardian~~,~~ ~~and~~ ward, attorney~~,~~ ~~and~~ client, employer~~,~~ ~~and~~ employee, landlord~~,~~ ~~and~~ tenant, ~~or being a~~family member ~~of the family~~ of the defendant, or ~~of the~~ person alleged to ~~be~~have been injured by the offense, or ~~on~~ whose complaint instituted the prosecution ~~was instituted~~.	6. Standing as a guardian, ward, attorney, client, employer, employee, landlord, tenant, family member of the defendant, or person alleged to have been injured by the offense, or whose complaint instituted the prosecution.
7. Being a party adverse to the defendant in a civil action, or ~~having~~a party who complained against the defendant, or ~~been~~whom the defendant accused ~~by the defendant~~, in a criminal prosecution.	7. Being a party adverse to the defendant in a civil action, or a party who complained against the defendant, or whom the defendant accused, in a criminal prosecution.
8. ~~Having served~~Service on the grand jury ~~which~~that found the indictment or an indictment on a related offense.	8. Service on the grand jury that found the indictment or an indictment on a related offense.
9. ~~Having served~~Service on a trial jury ~~which~~that ~~has~~ tried another person for the same or a related offense ~~to that charged in the indictment, complaint, tab charge or a related indictment, complaint or tab charge~~as the pending charge.	9. Service on a trial jury that tried another person for the same or a related offense as the pending charge.
10. ~~Having been a member of~~Service on ~~a~~ any jury ~~formerly~~previously sworn to try the ~~same indictment, complaint, tab charge or a related indictment, complaint or tab charge~~pending charge.	10. Service on any jury previously sworn to try the pending charge.
11. Service~~Having served~~ as a juror in any case involving the defendant.	11. Service as a juror in any case involving the defendant.
(2) How and When Exercised. A challenge for cause may be oral and ~~shall~~ must state ~~the~~ grounds ~~on which it is based~~. The challenge ~~shall~~ must be made before the juror is sworn to try the case, but the court for good cause ~~shown~~ may permit it to be made after the juror is sworn but before all the jurors constituting the jury are sworn. If the court sustains a challenge for cause ~~is made and the court sustains the challenge~~, the juror ~~shall~~ must be excused.	(2) How and When Exercised. A challenge for cause may be oral and must state grounds. The challenge must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before all the jurors constituting the jury are sworn. If the court sustains a challenge for cause, the juror must be excused.
(3) By Whom Tried. If ~~the opposing~~ a party objects to the ~~sufficiency of a~~ challenge for cause ~~or the facts on which it is based~~, ~~all issues of law or fact arising upon~~ the court must determine the challenge ~~shall be tried and determined by the court~~.	(3) By Whom Tried. If a party objects to the challenge for cause, the court must determine the challenge.
Subd. 6. Peremptory Challenges. ~~If the~~	Subd. 6. Peremptory Challenges. In cases

~~offense charged is~~In cases punishable by life imprisonment the defendant ~~shall be entitled to~~has 15 peremptory challenges and the ~~state to~~prosecutor has 9 ~~peremptory challenges~~. For any other offense, the defendant ~~shall be entitled to~~ has 5 peremptory challenges and the ~~state to~~prosecutor has 3 ~~peremptory challenges~~. ~~If there is~~In cases with more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly~~,~~. ~~and in that event the state's~~The prosecutor's peremptory challenges ~~shall~~ must be correspondingly increased. All peremptory challenges ~~shall~~ must be exercised out of the hearing of the jury panel.	punishable by life imprisonment the defendant has 15 peremptory challenges and the prosecutor has 9. For any other offense, the defendant has 5 peremptory challenges and the prosecutor has 3. In cases with more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly. The prosecutor's peremptory challenges must be correspondingly increased. All peremptory challenges must be exercised out of the hearing of the jury panel.
Subd. ~~6a~~7. Objections to Peremptory Challenges.	Subd. 7. Objections to Peremptory Challenges.
(1) Rule. No party may ~~engage in~~ purposefully ~~discrimination~~discriminate on the basis of ~~either~~ race or gender in the exercise of peremptory challenges.	(1) Rule. No party may purposefully discriminate on the basis of race or gender in the exercise of peremptory challenges.
(2) Procedure. Any party, or the court, at any time before the jury is sworn, may object to ~~the exercise of~~ a peremptory challenge on the ground of purposeful racial or gender discrimination ~~at any time before the jury is sworn to try the case~~. The objection and all arguments ~~thereon shall~~ must be ~~heard~~ made out of the hearing of all prospective or selected jurors~~the jury panel and the individual jury panel member involved~~. ~~A~~All proceedings on the objection must be on the record ~~shall be made of all proceedings upon the objection~~. ~~All issues of law or fact arising upon the objection shall~~ The objection must be ~~tried and~~ determined by the court as promptly as possible, ~~but in all events it shall~~ and must be ~~done~~decided before the jury is sworn ~~to try the case~~.	(2) Procedure. Any party, or the court, at any time before the jury is sworn, may object to a peremptory challenge on the ground of purposeful racial or gender discrimination. The objection and all arguments must be made out of the hearing of all prospective or selected jurors. All proceedings on the objection must be on the record. The objection must be determined by the court as promptly as possible, and must be decided before the jury is sworn.
(3) Determination. The trial court ~~shall~~ must use a three-step process for ~~evaluating a claim that~~determining whether a ~~any~~ party ~~has engaged in~~ purposefully discriminated on the basis of ~~racial~~race or gender ~~discrimination in the exercise of its peremptory challenges~~:	(3) Determination. The trial court must use a three-step process for determining whether a party purposefully discriminated on the basis of race or gender:
(a) First, the party making the objection must make a prima facie showing that the responding party ~~has~~ exercised its peremptory challenges on the basis of race or gender. If the court raised the objection ~~was raised by the court on its own initiative then~~, the court must ~~initially~~	(a) First, the party making the objection must make a prima facie showing that the responding party exercised its peremptory challenges on the basis of race or gender. If the court raised the objection, the court must determine, after any hearing it deems appropriate,

determine, after ~~such~~any hearing ~~as~~ it deems appropriate, ~~that there is~~ whether a prima facie showing exists.~~ that the responding party has exercised its peremptory challenges on the basis of race or gender.~~ If no prima facie showing is found, the objection ~~shall~~must be overruled.	whether a prima facie showing exists. If no prima facie showing is found, the objection must be overruled.
(b) Second, if the ~~court determines that a~~ prima facie showing has been made, the responding party must articulate a race-~~neutral~~ or gender-neutral explanation~~, as applicable,~~ for exercising the peremptory challenge(s)~~ in question~~. If the responding party fails to articulate a~~no~~ race-~~neutral~~ or gender-neutral explanation~~ is articulated~~, the objection ~~shall~~ must be sustained.	(b) Second, if the prima facie showing has been made, the responding party must articulate a race- or gender-neutral explanation for exercising the peremptory challenge(s). If the responding party fails to articulate a race- or gender-neutral explanation, the objection must be sustained.
(c) Third, if the court determines that a race-~~neutral~~ or gender-neutral explanation has been articulated, the objecting party~~,~~ must prove that the ~~proffered~~ explanation is pretextual. If the court initially raised the objection~~, was initially raised by the court,~~ it ~~shall~~ must determine, after ~~such~~any hearing ~~as~~ it deems appropriate, whether the party exercised the peremptory challenge~~ was exercised~~ in a purposefully discriminatory manner on the basis of race or gender. If purposeful discrimination is proved, the objection ~~shall~~ must be sustained~~. If no purposeful discrimination is proved~~; otherwise the objection ~~shall~~must be overruled.	(c) Third, if the court determines that a race- or gender-neutral explanation has been articulated, the objecting party must prove that the explanation is pretextual. If the court initially raised the objection, it must determine, after any hearing it deems appropriate, whether the party exercised the peremptory challenge in a purposefully discriminatory manner on the basis of race or gender. If purposeful discrimination is proved, the objection must be sustained; otherwise the objection must be overruled.
(4) Remedies. If the ~~objection is overruled~~court overrules the objection, the prospective juror ~~jury panel member against whom the peremptory challenge was exercised shall~~ must be excused. If the court sustains the objection~~ is sustained~~, the court ~~shall~~ must ~~do either of the following~~ – based upon its determination of what the interests of justice and a fair trial to all parties in the case require – either: (a) Disallow the discriminatory peremptory challenge and resume jury selection with the challenged prospective juror~~jury panel member~~ reinstated on the panel; or (b) Discharge the entire jury panel and select a new jury from a jury panel not previously associated with the case.	(4) Remedies. If the court overrules the objection, the prospective juror must be excused. If the court sustains the objection, the court must – based upon its determination of what the interests of justice and a fair trial to all parties in the case require – either: (a) Disallow the discriminatory peremptory challenge and resume jury selection with the challenged prospective juror reinstated on the panel; or (b) Discharge the entire jury panel and select a new jury from a jury panel not previously associated with the case.
Subd. ~~7~~8. Order of Challenges~~ to the Panel and to Individual Jurors~~. Challenges ~~to the panel and to individual jurors shall~~must be made in the following order:	Subd. 8. Order of Challenges. Challenges must be made in the following order:

a. To the panel. b. To an individual prospective juror for cause, except that under subd. 5(2) a challenge for cause may be made at any time before a jury is sworn. c. Peremptory challenge to an individual prospective juror.	a. To the panel. b. To an individual prospective juror for cause, except that under subd. 5(2) a challenge for cause may be made at any time before a jury is sworn. c. Peremptory challenge to an individual prospective juror.
Subd. 89. Alternate Jurors. A trial judgeThe court may impanel alternate or additional jurors. whenever in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall must be discharged afterwhen the jury retires to consider its verdict. If a juror becomes unable to serve, an Alternatealternate jurors must replace that juror. Alternate jurors replace jurors, in the order in which theythe alternates were drawn. are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall beare allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial shall must be declared unless the parties agree pursuant tounder Rule 26.01, subd. 1(4) that the jury shall consist of a lesser number than that selected for the trial.	Subd. 9. Alternate Jurors. The court may impanel alternate jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider its verdict. If a juror becomes unable to serve, an alternate juror must replace that juror. Alternate jurors replace jurors in the order the alternates were drawn. No additional peremptory challenges are allowed for alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial must be declared unless the parties agree under Rule 26.01, subd. 1(4) that the jury consist of a lesser number than that selected for the trial.
Rule 26.03 Procedures During Trial	**Rule 26.03 Procedures During Trial**
Subd. 1. Presence of Defendant's Presence.	Subd. 1. Defendant's Presence.
(1) Presence Required. The defendant shallmust be present at the arraignment, at the time of the plea, at and for every stage of the trial including: the impaneling of the • jury selection; • opening statements; • presentation of evidence; • closing argument;	(1) Presence Required. The defendant must be present at arraignment, plea, and for every stage of the trial including: • jury selection; • opening statements; • presentation of evidence; • closing argument; • jury instructions;

• jury instructions; • any jury questions dealing with evidence or law; • ~~and the return of~~ the verdict; • ~~and at the imposition of sentence~~sentencing.~~, except as otherwise provided by these rules.~~	• any jury questions dealing with evidence or law; • the verdict; • sentencing.
If the defendant is ~~handicapped~~disabled in communication, a qualified interpreter ~~for that defendant shall~~must also be present at each ~~of these~~ proceeding~~s~~.	If the defendant is disabled in communication, a qualified interpreter must also be present at each proceeding.
(2) ~~Continued~~ Presence ~~Not Required~~Waived. The trial ~~further progress of a trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to waive the right to be present whenever~~may proceed to verdict without the defendant's presence if:	(2) Presence Waived. The trial may proceed to verdict without the defendant's presence if:
1. ~~a~~The defendant ~~voluntarily and without justification absents~~is absent without justification ~~himself or herself~~ after the trial ~~has commenced~~starts; or	1. The defendant is absent without justification after the trial starts; or
2. ~~a~~The defendant, after warning, engages in conduct ~~which is such as to justify~~that justifies ~~being excluded~~expulsion from the courtroom because it ~~tends to interrupt the orderly procedure of the court and the due course of~~ disrupts the trial or hearing. But, as~~As~~ an alternative to ~~exclusion~~expulsion, the court may use ~~all such methods of~~ restraints ~~as will ensure the orderly procedure of the court and the due course of the trial~~if necessary to ensure order in the courtroom.	2. The defendant, after warning, engages in conduct that justifies expulsion from the courtroom because it disrupts the trial or hearing. But, as an alternative to expulsion, the court may use restraints if necessary to ensure order in the courtroom.
(3) Presence Not Required. ~~A defendant need not be present in the following situations:~~	(3) Presence Not Required.
1. Corporations. ~~a~~A corporation may appear by counsel ~~for all purposes;~~.	1. Corporations. A corporation may appear by counsel.
2. Felony and Gross Misdemeanors. ~~in the case of felonies and gross misdemeanors~~In felony and gross misdemeanor cases, ~~on defendant's motion,~~ the court may, on the defendant's motion, excuse the defendant's ~~from attendance~~presence ~~at any proceeding~~ except at arraignment, plea, trial, and ~~imposition of~~ sentence~~ing; and~~.	2. Felony and Gross Misdemeanors. In felony and gross misdemeanor cases, the court may, on the defendant's motion, excuse the defendant's presence except at arraignment, plea, trial, and sentencing.
3. Misdemeanors. ~~in prosecutions for misdemeanors~~In misdemeanor cases, if the defendant consents either in writing or on the record, the court ~~shall permit~~ must excuse the defendant from appearing for arraignment ~~and~~or	3. Misdemeanors. In misdemeanor cases, if the defendant consents either in writing or on the record, the court must excuse the defendant from appearing for arraignment or plea, and the court may excuse the defendant from appearing at trial

plea, and the court may excuse the defendant from appearing at trial or sentencing. ~~in the defendant's absence if the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present. The court with the written consent of the defendant, or the defendant's oral consent in open court, may permit trial, and imposition of sentence in the defendant's absence.~~	or sentencing.
4. ITV or Telephone. ~~The court in its discretion and upon agreement of the defendant may allow the participation by ITV or telephone of one or more parties, counsel, or the judge in any proceedings in which the defendant would otherwise be permitted to waive personal appearance under these rules.~~ If a defendant consents, the court may allow the parties, lawyers, or the court to appear using ITV or telephone in any proceeding where the defendant could waive appearance under these rules.	4. ITV or Telephone. If a defendant consents, the court may allow the parties, lawyers, or the court to appear using ITV or telephone in any proceeding where the defendant could waive appearance under these rules.
Subd. 2. Custody and Restraint of Defendants and Witnesses.	Subd. 2. Custody and Restraint of Defendants and Witnesses.
a. During ~~the~~ trial, the defendant ~~shall~~must be seated ~~so as~~ to permit effective~~ly~~ consultation with defense counsel and to see and hear the proceedings.	a. During trial, the defendant must be seated to permit effective consultation with defense counsel and to see and hear the proceedings.
b. During trial, ~~A~~an incarcerated defendant or witness ~~shall~~must not appear in court in the distinctive attire of a prisoner.	b. During trial, an incarcerated defendant or witness must not appear in court in the distinctive attire of a prisoner.
c. Defendants and witnesses ~~shall~~must not be subjected to physical restraint while in court unless the court:	c. Defendants and witnesses must not be subjected to physical restraint while in court unless the court:
1. ~~the trial judge has found such~~ Finds the restraint ~~reasonably~~ necessary to maintain order or security~~.~~; and	1. Finds the restraint necessary to maintain order or security; and
2. ~~A trial judge who orders such restraint, shall state~~States the reasons ~~on the record~~ for the restraints on the record outside the ~~presence~~hearing of the jury.	2. States the reasons for the restraints on the record outside the hearing of the jury.
d. If ~~Whenever~~the ~~physical~~ restraint is apparent to the jury,~~of a defendant or witness occurs in the presence of jurors trying the case, the judge shall on~~ and the defendant requests, the judge must ~~of the defendant instruct those jurors~~instruct the jury that ~~such~~the restraint ~~is not to~~ must not be considered in ~~assessing the proof and determining guilt~~reaching the verdict.	d. If the restraint is apparent to the jury, and the defendant requests, the judge must instruct the jury that the restraint must not be considered in reaching the verdict.

Subd. 3. ~~Use of~~ Media Access and Courtroom Decorum. (a) ~~Whenever appropriate in view of the notoriety of the case or the number or conduct of news media representatives present at any judicial proceeding, the~~The court ~~shall~~must ensure the preservation of decorum in the courtroom. (b) ~~by instructing those representatives and others as to the permissible use of the courtroom and other facilities of the court, the assignment of~~The court may reserve seats ~~to news media representatives on an equitable basis, and other matters that may affect the conduct of the proceeding~~in the courtroom for reporters. (c) The court may advise reporters about the proper use of the courtroom and other court facilities, or about courtroom decorum. Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements~~ of counsel~~, the court may instruct the jury ~~as to the~~on the parties' respective claims~~ of the parties~~ and ~~as to such~~on other matters ~~as~~that will aid the jury in comprehending the order of trial and trial procedure~~s and sequence to be followed~~. Preliminary instructions may~~ also~~ include the: ~~such matters as~~ • burden of proof~~,~~; • presumption of innocence~~,~~; • ~~the~~ necessity of proof of guilt beyond a reasonable doubt~~,~~; • ~~the elements which~~factors the jury may consider in weighing testimony or determining credibility of witnesses~~,~~; • rules applicable to opinion evidence~~,~~; ~~and~~ • ~~such other rules of law, including the essential~~ elements of the offense~~,~~; • ~~as the court may deem~~other rules of law essential to the proper understanding of the evidence. ~~Such~~The preliminary instructions ~~shall~~must be disclosed to the parties before they are given, and ~~either~~any party may object to ~~any~~ specific instruction~~s~~ or propose other instructions~~ to be given prior to trial~~.	Subd. 3. Media Access and Courtroom Decorum. (a) The court must ensure the preservation of decorum in the courtroom. (b) The court may reserve seats in the courtroom for reporters. (c) The court may advise reporters about the proper use of the courtroom and other court facilities, or about courtroom decorum. Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements, the court may instruct the jury on the parties' respective claims and on other matters that will aid the jury in comprehending the order of trial and trial procedures. Preliminary instructions may include the: • burden of proof; • presumption of innocence; • necessity of proof of guilt beyond a reasonable doubt; • factors the jury may consider in weighing testimony or determining credibility of witnesses; • rules applicable to opinion evidence; • elements of the offense; • other rules of law essential to the proper understanding of the evidence. The preliminary instructions must be disclosed to the parties before they are given, and any party may object to specific instructions or propose other instructions.

Subd. 5. Jury Sequestration ~~of the Jury~~.	Subd. 5. Jury Sequestration.
~~In the~~ Discretion of the Court. ~~During the period from~~From the time the jurors are sworn until they retire for deliberation, ~~upon their verdict,~~ the court~~, in its discretion,~~ may ~~either~~ permit them and any alternate jurors to separate during recesses and adjournments, or direct that they ~~be~~remain together continuously ~~kept together during such period~~ under the supervision of ~~proper~~designated officers. ~~With the consent of the defendant and the prosecution, the court, in its discretion, may allow the jurors to separate over night during deliberation. The officers shall not speak to or communicate with any juror concerning any subject connected with the trial nor permit any other person to do so, and shall return the jury to the courtroom at the next designated trial session.~~	(1) Discretion of the Court. From the time the jurors are sworn until they retire for deliberation, 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. ~~Either~~ Any party may move for sequestration of the jury at the beginning of trial or at any time during ~~the course of the~~ trial. Sequestration ~~shall~~ must be ordered if ~~it is determined that~~ 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 ~~of the jurors~~. Whenever sequestration is ordered, the court in advising the jury of the decision ~~shall~~must not disclose which party requested sequestration.	(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, the court may allow the jurors to separate over night during deliberation.	(3) During Deliberations. With the consent of the defendant and the prosecution, the court may allow the jurors to separate over night during deliberation.
(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.	(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.
Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules ~~shall~~ govern ~~the issuance of any court~~ orders ~~excluding the~~restricting public ~~from any~~access to portions of the trial ~~that takes place~~conducted outside the presence of the jury ~~and~~or restricting access to ~~any~~ trial transcripts ~~or orders~~, or an order ~~developed~~arising from ~~such~~a closed portion~~s~~ of the trial.	Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules govern orders restricting public access to portions of the trial conducted outside the presence of the jury or restricting access to trial transcripts, or an order arising from a closed portion of the trial.

(1) Grounds for Exclusion of Public. (a) If the jury is not sequestered, ~~the court~~ on motion of a party or the court's own motion,~~its initiative or on motion of the defendant or the prosecuting attorney may~~ the court may order that the public be excluded from ~~any~~ portions of the trial ~~that takes~~held ~~place~~ outside ~~the presence of~~ the jury's presence ~~on the ground that~~if the court finds that public dissemination of evidence or argument ~~adduced~~ at the hearing ~~may~~ would likely interfere with an overriding interest, including ~~that it is likely to interfere with~~the right to a fair trial ~~by an impartial jury~~. ~~The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference.~~	(1) Grounds for Exclusion of Public. (a) If the jury is not sequestered, on motion of a party or the court's own motion, the court may order that the public be excluded from portions of the trial held outside the jury's presence if the court finds that public dissemination of evidence or argument at the hearing would likely interfere with an overriding interest, including the right to a fair trial.
(b) Alternative Measures. Before restricting public access, ~~In determining the motion~~ the court ~~shall~~must consider reasonable alternatives to ~~closing such portion of the trial~~restricting public access. ~~and the closure~~The restriction ~~shall~~must be no broader than ~~is~~ necessary to protect the overriding interest involved, including ~~to protect the overriding interest involved~~the right to a fair trial.	(b) Alternative Measures. Before restricting public access, the court must consider reasonable alternatives to restricting public access. The restriction must be no broader than necessary to protect the overriding interest involved, including the right to a fair trial.
(2) Notice ~~to Adverse Counsel~~. ~~If, during trial, counsel for either the prosecution or the defense has evidence that counsel believes may be the subject of an exclusionary order, counsel has a duty first to advise opposing counsel of that fact and suggest that both counsel meet privately with the presiding judge in closed court and disclose to the court the problem. If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court.~~ If any party wishes to bring a motion excluding the public, the party must request a closed meeting with counsel and the court.	(2) Notice. If any party wishes to bring a motion excluding the public, the party must request a closed meeting with counsel and the court.
(3) ~~Meeting in Closed Court and Notice of Hearing~~Closed Hearing and Public Notice. ~~In closed court the court shall~~ At the closed hearing, the court must review the evidence ~~outlined by counsel that may~~sought to be ~~the subject of a restrictive order~~excluded from public access. If the court ~~feels that any of the proffered evidence may properly be the subject for a restrictive order, the court shall immediately~~finds restriction appropriate, the court must ~~docket~~schedule a ~~notice of~~ hearing on the ~~court's initiative or on a motion for a restrictive order made by either counsel~~potential restrictive order. ~~Such~~A hearing	(3) Closed Hearing and Public Notice. At the closed hearing, the court must review the evidence sought to be excluded from public access. If the court finds restriction appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing. The notice must allow the public, including reporters, an opportunity to be heard on whether any overriding interests exist, including the right to a fair trial, that would justify closing the hearing to the public.

notice ~~shall~~must be ~~docketed~~issued publicly at least 24 hours before the hearing. ~~and shall be reasonably calculated to afford~~The notice must allow the public, including reporters, ~~and the news media with~~ an opportunity to be heard on whether ~~the~~ any overriding interests exist, including the right to a fair trial, ~~claimed justifies~~that would justify closing the hearing to the public ~~and the news media~~.	
(4) Hearing. At the hearing ~~held pursuant to such notice,~~ the ~~trial~~ court ~~shall~~must ~~advise all present~~disclose that evidence ~~has been disclosed to it that may be the subject of a~~exists that may justify ~~closure~~restricting access. The court must allow ~~order and shall give~~ the public, including reporters, ~~and the news media an opportunity~~ to suggest ~~any~~ alternatives to a restrictive order.	(4) Hearing. At the hearing the court must disclose that evidence exists that may justify restricting access. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.
(5) Findings ~~of Fact~~. ~~No exclusion order shall issue without the court setting forth the reasons therefor in written findings of fact. Such findings must include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate.~~ An order and supporting findings of fact restricting public access must be in writing. The order must address alternatives to closure and explain why the alternatives are inadequate. Any matter ~~to be decided which does not present the risk of revealing inadmissible, prejudicial information shall~~relevant to the court's decision that does not endanger the overriding interests involved, including the right to a fair trial, must be decided ~~openly and~~ on the record in open court.	(5) Findings. An order and supporting findings of fact restricting public access must be in writing. The order must address alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not endanger the overriding interests involved, including the right to a fair trial, must be decided on the record in open court.
(6) Records. ~~Whenever under this rule part of the proceedings are~~If the court closes a portion of the trial~~closed to the public~~, a ~~complete~~ record of ~~those~~the non-public proceedings ~~shall~~must be made. ~~and upon~~If anyone makes a request, ~~shall~~ the record ~~be~~ must be transcribed at public expense. ~~and filed and shall be available to the public following the completion of the trial.~~The record must be publicly available after the trial. ~~For the protection of innocent persons, the~~The court may ~~order that names be deleted or substitutions therefor be made in the record~~redact names from the record to protect the innocent.	(6) Records. If the court closes a portion of the trial, a record of the non-public proceedings must be made. If anyone makes a request, the record must be transcribed at public expense. The record must be publicly available after the trial. The court may redact names from the record to protect the innocent.
(7) Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying ~~an exclusion~~public access ~~or restrictive order under this rule~~ may petition the Court of Appeals for review., ~~which shall be~~This is the	(7) Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

exclusive method for obtaining review.	
The Court of Appeals ~~shall~~must determine ~~upon the hearing record~~ whether the ~~moving~~ party who moved for public exclusion met ~~sustained~~ the burden ~~of~~ justifying the ~~order~~exclusion under ~~the conditions specified in~~ this rule~~,~~. ~~and~~ The Court of Appeals may reverse, affirm, or modify the district court's order ~~issued~~.	The Court of Appeals must determine whether the party who moved for public exclusion met the burden justifying the exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.
Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees~~; Insulating Witnesses~~. ~~Whenever appropriate, the~~The court ~~shall~~may order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for public dissemination ~~by any means of public communication~~ during the ~~course of the~~ trial.	Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees. The court may order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for public dissemination during the trial.
Subd. 8. Sequestration. ~~Witnesses~~The court may ~~be sequestered or excluded~~sequester witnesses from the courtroom~~, prior to~~before their appearance~~, in the discretion of the court~~.	Subd. 8. Sequestration. The court may sequester witnesses from the courtroom before their appearance.
Subd. ~~8~~9. Admonitions to Jurors. ~~Appropriate admonitions shall be given to the jury during the trial~~ The court may advise the jurors not to read, listen to, or watch news reports about the case ~~appearing in the news media~~.	Subd. 9. Admonitions to Jurors. The court may advise the jurors not to read, listen to, or watch news reports about the case.
Subd. ~~9~~10. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If ~~it is determined~~the court determines that material disseminated outside the trial proceedings raises ~~serious~~ questions of possible prejudice, the court may on its initiative, and ~~shall~~must on motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination ~~shall~~must take place in the presence of counsel, and a ~~verbatim~~ record of the examination ~~shall~~must be ~~kept~~made.	Subd. 10. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If the court determines that material disseminated outside the trial proceedings raises questions of possible prejudice, the court may on its initiative, and must on motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination must take place in the presence of counsel, and a record of the examination must be made.
Subd. ~~10~~11. View by Jury.	Subd. 11. View by Jury.
a. ~~When the~~The court may allow ~~is of the opinion that a viewing by~~ the jury ~~of the~~to view a place ~~where the offense being tried was committed, or any other place involved in the~~relevant to a case at any time before closing	a. The court may allow the jury to view a place relevant to a case at any time before closing arguments if doing so would be helpful to the jury in deciding a material factual issue.

arguments~~, will~~ if doing so would be helpful to the jury in ~~determining any~~deciding a material factual issue~~, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place~~.	
b. ~~The jury must be kept together during~~At the viewing:	b. At the viewing:
• The jury must be kept together under the supervision of an ~~proper~~ officer appointed by the court~~.~~;	• The jury must be kept together under the supervision of an officer appointed by the court;
• The judge and ~~a~~the court reporter must be present~~.~~; ~~and with the judge's permission any other person may be present.~~	• The judge and the court reporter must be present;
• The ~~prosecuting attorney~~prosecutor, ~~the~~ defendant and defense ~~counsel~~attorney ~~may as a matter of~~have the right to be present~~, but the right may be waived.~~; and	• The prosecutor, defendant and defense attorney have the right to be present; and
• Others may be present if authorized by the court.	• Others may be present if authorized by the court.
c. The purpose of the viewing ~~shall be solely to permit~~ is limited to visual observation ~~by the jury~~ of the place in question, and neither the parties, nor counsel~~,~~ ~~n~~or the jurors while viewing the place may ~~engage in discussion concerning~~discuss the significance or implications of anything under observation or ~~concerning~~ any issue in the case.	c. The purpose of the viewing is limited to visual observation of the place in question, and neither the parties, nor counsel or the jurors while viewing the place may discuss the significance or implications of anything under observation or any issue in the case.
Subd. ~~11~~12. Order of Jury Trial.	Subd. 12. Order of Jury Trial.
~~The order of a jury trial shall be substantially as follows:~~	
a. The jury ~~shall be~~is selected and sworn.	a. The jury is selected and sworn.
b. The court may deliver preliminary jury instructions ~~to the jury~~.	b. The court may deliver preliminary jury instructions.
c. The ~~prosecuting attorney~~prosecutor may make an opening statement ~~to the jury, confining the statement~~limited to the facts the ~~prosecuting attorney~~prosecutor expects to prove.	c. The prosecutor may make an opening statement limited to the facts the prosecutor expects to prove.
d. The defendant may make an opening statement ~~to the jury~~ after the prosecutor's opening statement, ~~or may make it immediately before offering evidence in defense~~or make an opening statement at the beginning of the defendant's case. The defendant's statement ~~shall be confined to a statement of~~must be limited to the defense and the facts the defendant expects to ~~prove in support thereof~~offer supporting that defense.	d. The defendant may make an opening statement after the prosecutor's opening statement, or make an opening statement at the beginning of the defendant's case. The defendant's statement must be limited to the defense and the facts the defendant expects to offer supporting that defense.
e. The ~~prosecution shall offer evidence in support of the indictment, complaint or tab~~	e. The prosecutor presents evidence in support of the state's case.

~~charge~~prosecutor presents evidence in support of the state's case.	
f. The defendant may offer evidence in defense.	f. The defendant may offer evidence in defense.
g. The ~~prosecution~~ prosecutor may ~~offer evidence in rebuttal of~~rebut the defense evidence, and, the ~~defendant~~defense may ~~then offer~~rebut the prosecutor's evidence~~ in rebuttal of the prosecution's rebuttal evidence~~. In the interests of justice, the court may ~~permit either~~allow any party to reopen that party's case to offer additional evidence~~ upon the party's original case~~.	g. The prosecutor may rebut the defense evidence, and, the defense may rebut the prosecutor's evidence. In the interests of justice, the court may allow any party to reopen that party's case to offer additional evidence.
h. ~~At the conclusion of the evidence, the~~The ~~prosecution~~ prosecutor may make a closing argument~~ to the jury~~.	h. The prosecutor may make a closing argument.
i. The defendant may ~~then~~ make a closing argument~~ to the jury~~.	i. The defendant may make a closing argument.
j. The ~~prosecution~~prosecutor may ~~then~~ make a rebuttal argument ~~to the defense closing argument. The rebuttal must be~~ limited to a direct response to ~~those matters raised in~~ the defendant's closing argument.	j. The prosecutor may make a rebuttal argument limited to a direct response to the defendant's closing argument.
k. On ~~the~~ motion~~ of the defendant~~, the court may ~~permit the defendant to reply in surrebuttal~~allow a defense rebuttal if the court ~~determines that~~finds the prosecution has made ~~in its rebuttal argument~~ a misstatement of law or fact or ~~a statement that is~~an inflammatory or prejudicial statement in rebuttal. ~~The surrebuttal must be~~Rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.	k. On motion, the court may allow a defense rebuttal if the court finds the prosecution has made a misstatement of law or fact or an inflammatory or prejudicial statement in rebuttal. Rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.
l. ~~At the conclusion of the arguments~~Outside the jury's presence, the court ~~shall~~ must allow the parties ~~an opportunity, outside the presence of the jury and on the record, to make any objections they may have to the content or manner of~~to object to the other party's argument ~~based upon existing law and to~~and request curative instructions. ~~This rule does not limit the right of any party under existing law to make appropriate objections and to seek curative instructions at any other time during the closing argument process~~The parties may also object and seek curative instructions before or during argument.	l. Outside the jury's presence, the court must allow the parties to object to the other party's argument and request curative instructions. The parties may also object and seek curative instructions before or during argument.
m. The court ~~shall charge~~instructs the jury.	m. The court instructs the jury.
n. The jury ~~shall retire for deliberation~~deliberates and, if possible, render~~s~~ a verdict.	n. The jury deliberates and, if possible, renders a verdict.
Subd. ~~12~~13. ~~Note Taking.~~ Jurors may take notes ~~of the evidence presented at the trial and may~~	Subd. 13. Jurors may take notes during the presentation of evidence and use them during

~~keep these notes with them when they retire for~~during the presentation of evidence and use them during deliberation.	deliberation.
Subd. ~~13~~14. Substitution of Judge.	Subd. 14. Substitution of Judge.
(1) Before or During Trial. If ~~by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed,~~a judge is unable to preside over pretrial or trial proceedings due to death, illness, or other disability, any other judge ~~sitting in or assigned to the court, upon certification of familiarity~~ in the district, once familiar with the record ~~of the proceedings or trial~~, may ~~proceed with and~~ finish the proceedings or trial.	(1) Before or During Trial. If a judge is unable to preside over pretrial or trial proceedings due to death, illness, or other disability, any other judge in the district, once familiar with the record, may finish the proceedings or trial.
(2) After Verdict or Finding of Guilt. If ~~by reason of absence,~~a judge is unable to preside due to death, ~~sickness~~ illness or other disability~~, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court~~ after ~~a~~ verdict or finding of guilt~~,~~ any other judge ~~sitting in or assigned to the court may perform those duties;~~in the district may finish the proceedings. ~~but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial~~If the subsequent judge determines the proceedings cannot be finished because the judge did not preside at the trial, the judge may order a new trial.	(2) After Verdict or Finding of Guilt. If a judge is unable to preside due to death, illness or other disability after verdict or finding of guilt, any other judge in the district may finish the proceedings. If the subsequent judge determines the proceedings cannot be finished because the judge did not preside at the trial, the judge may order a new trial.
(3) Interest or Bias of Judge. ~~No judge shall preside over~~A judge must not preside at a trial or other proceeding if ~~that judge is~~ disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause ~~shall~~ must be heard and determined by the chief judge of the ~~judicial~~ district or by the assistant chief judge if the chief judge is the subject of the request.	(3) Interest or Bias of Judge. A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause must be heard and determined by the chief judge of the district or by the assistant chief judge if the chief judge is the subject of the request.
(4) Notice to Remove. ~~The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to~~ A party may remove ~~the~~ a judge assigned to preside at a trial or hearing as follows: (a) A notice to remove must be served on the opposing counsel and filed with district court ~~The notice shall be served and filed~~ within ~~seven (~~7~~)~~ days after the party receives notice of ~~which~~ the	(4) Notice to Remove. A party may remove a judge assigned to preside at a trial or hearing as follows: (a) A notice to remove must be served on the opposing counsel and filed with district court within 7 days after the party receives notice of the name of the presiding judge at the trial or hearing;

name of the presiding judge ~~is to preside~~ at the trial or hearing~~,~~; (b) ~~but not later than the commencement~~The notice must be filed before the start of the trial or hearing~~.~~; and (c) ~~No notice to remove shall be~~The notice is not effective against a judge who ~~has~~ already presided at the trial, Omnibus Hearing, or ~~other~~ evidentiary hearing ~~of which the~~if the removing party had notice~~, except upon an affirmative showing of cause on the part of the judge~~ the judge would preside at the hearing.	(b) The notice must be filed before the start of the trial or hearing; and (c) The notice is not effective against a judge who already presided at the trial, Omnibus Hearing, or evidentiary hearing if the removing party had notice the judge would preside at the hearing.
(~~d~~5) After a party ~~has once disqualified a presiding~~removes a judge ~~as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of~~under subdivision 14(4), that party may remove a subsequent judge only for cause.	(5) After a party removes a judge under subdivision 14(4) that party may remove a subsequent judge only for cause.
(~~5~~6) Recusal. ~~A judge without a motion~~The court may recuse ~~himself or herself~~itself from presiding over a ~~trial or other proceeding~~case without a motion.	(6) Recusal. The court may recuse itself from presiding over a case without a motion.
(~~6~~7) Assignment of New Judge. ~~Upon the removal, disqualification, disability, recusal or unavailability of a judge~~If a judge is unavailable for any reason under this rule, the chief judge of the judicial district ~~shall~~ must assign ~~any other~~another judge within the district to hear the matter. If ~~there is~~ no other judge ~~of~~ in the district ~~who is qualified to hear the matter~~is available, the chief judge ~~of the district shall~~must notify the chief justice. The chief justice ~~shall then~~must assign a judge of another district to preside over the matter.	(7) Assignment of New Judge. If a judge is unavailable for any reason under this rule, the chief judge of the judicial district must assign another judge within the district to hear the matter. If no other judge in the district is available, the chief judge must notify the chief justice. The chief justice must assign a judge of another district to preside over the matter.
Subd. ~~14~~15. ~~Exceptions~~Objections. ~~(1) Exceptions Abolished. Exceptions to rulings or orders of the court or to the actions of a party are abolished. It is sufficient that a party, at the time the~~An objection to a court order or ruling ~~or order of court is made or sought or the action of a~~ is preserved for appeal if the party ~~taken, makes known to the court the action which the party desires the court to take or the party's~~indicates on the record its objections ~~or~~ or position. ~~to the action of the court or of a party and the grounds therefor; and, if a party has~~ If no opportunity existed to object or indicate a position, ~~to a ruling or order or action at the time it is made or taken~~ the absence of	Subd. 15. Objections. An objection to a court order or ruling is preserved for appeal if the party indicates on the record its objection or position. If no opportunity existed to object or indicate a position, the absence of an objection or stated position does not prejudice the party.

an objection or stated position does not ~~thereafter~~ prejudice the party. ~~(2) Bills of Exception and Settled Cases Abolished. The bill of exceptions and settled case shall not be required. The record of the case for the purposes for which a bill of exceptions or settled case was heretofore required shall consist of the papers filed in the trial court, the offered exhibits, and the minutes of the court, and the transcript of the proceedings, if any.~~	
Subd. ~~15~~16. Evidence. ~~In all trials the testimony of witnesses shall~~At trial, witness testimony must be taken in open court, unless ~~otherwise provided by~~ these rules provide otherwise. Jurors ~~shall not be permitted to~~may not submit questions to ~~any~~ a witness~~,~~ directly or through the ~~court or counsel~~judge or attorneys. If either party offers ~~into evidence a videotape or audiotape exhibit~~an audio or video recording, that party may ~~also provide to the court~~offer a transcript of the ~~proposed exhibit~~recording, which will be ~~made a~~ part of the record.	Subd. 16. Evidence. At trial, witness testimony must be taken in open court, unless these rules provide otherwise. Jurors may not submit questions to a witness directly or through the judge or attorneys. If either party offers an audio or video recording, that party may offer a transcript of the recording, which will be part of the record.
Subd. ~~16~~17. Interpreters. The court ~~may~~ must appoint and compensate ~~an~~ interpreters as provided under Rule 8 of the General Rules of Practice for District Courts ~~of its own selection and may fix reasonable compensation for the interpreter. The compensation shall be paid out of funds provided by law. Qualified interpreters~~Interpreters may be appointed and be present during deliberations ~~by the court~~ for ~~any~~ a juror with a sensory disability ~~may be present in the jury room to interpret while the jury is deliberating and voting~~.	Subd. 17. Interpreters. The court must appoint and compensate interpreters as provided under Rule 8 of the General Rules of Practice for District Courts. Interpreters may be appointed and be present during deliberations for a juror with a sensory disability.
Subd. ~~17~~18. Motion for Judgment of Acquittal or ~~Insufficiency of~~Insufficient Evidence ~~to Support~~for an Aggravated Sentence.	Subd. 18. Motion for Judgment of Acquittal or Insufficient Evidence for an Aggravated Sentence.
(1) ~~Motions Before Submission to Jury~~Before Deliberations. (a) Charged Offense. ~~Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. After the evidence on either side is closed, the court on motion of a defendant or on its initiative shall order the entry of~~At the close of evidence for either party, the defendant may move for, or the court on its	(1) Before Deliberations. (a) Charged Offense. At the close of evidence for either party, the defendant may move for, or the court on its own may order, a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction.

own may order, a judgment of acquittal ~~of~~ on one or more ~~offenses charged in the tab charge, indictment or complaint~~of the charges if the evidence is insufficient to sustain a conviction ~~of such offense or offenses~~.	
(b) Aggravated Sentence. ~~The court shall also, on motion of the defendant or on its initiative, order that any grounds for an aggravated sentence be withdrawn from consideration by the jury~~The defendant may move for, or the court on its own may order, that any aggravating factors be withdrawn from consideration by the jury if the evidence is insufficient to prove them.	(b) Aggravated Sentence. The defendant may move for, or the court on its own may order, that any aggravating factors be withdrawn from consideration by the jury if the evidence is insufficient to prove them.
(2) Reservation of Decision ~~on Motion~~. If the defendant's motion is made at the close of the ~~evidence offered by the prosecution~~prosecution's case, the court ~~may not reserve decision of~~must rule on the motion. If the defendant's motion is made at the close of ~~all the evidence~~the defendant's case, the court may reserve ~~decision~~ ruling on the motion, submit the case to the jury, and ~~decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict~~rule before or after verdict. If the ~~defendant's motion is granted after the jury returns~~court grants the defendant's motion after a verdict of guilty, the court ~~shall~~ must make a written ~~findings specifying its reasons for entering a judgment of acquittal~~finding stating the reason for the order.	(2) Reservation of Decision. If the defendant's motion is made at the close of the prosecution's case, the court must rule on the motion. If the defendant's motion is made at the close of the defendant's case, the court may reserve ruling on the motion, submit the case to the jury, and rule before or after verdict. If the court grants the defendant's motion after a verdict of guilty, the court must make a written finding stating the reason for the order.
(3) ~~Motion After Discharge of Jury~~After Verdict or Discharge.	(3) After Verdict or Discharge.
(a) If the jury returns a verdict of guilty or is discharged without ~~having returned a~~ verdict, a motion for a judgment of acquittal ~~or insufficiency of evidence to support an aggravated sentence may be made or renewed~~may be brought within 15 days after the jury is discharged or within ~~such~~any further time as the court may fix during the 15-day period.	(a) If the jury returns a verdict of guilty or is discharged without verdict, a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged or within any further time as the court may fix during the 15-day period.
(b) If the jury finds aggravating factors, the defendant may move the court to determine that the evidence is insufficient to sustain them.	(b) If the jury finds aggravating factors, the defendant may move the court to determine that the evidence is insufficient to sustain them.
(c) If the court grants the defendant's motion for a judgment of acquittal or determines that the evidence is insufficient to sustain the aggravating factors, the court must make written findings stating the reasons for the order.	(c) If the court grants the defendant's motion for a judgment of acquittal or determines that the evidence is insufficient to sustain the aggravating factors, the court must make written findings stating the reasons for the order.
~~If a verdict of guilty is returned the court may on~~	

~~such motion set aside the verdict and enter judgment of acquittal, in which case the court shall make written findings specifying its reasons for entering a judgment of acquittal.~~	
(d) If no verdict is returned, the court may enter judgment of acquittal. If no finding of an aggravating factor is made, the court may enter a finding of insufficient evidence to support an aggravated sentence.	(d) If no verdict is returned, the court may enter judgment of acquittal. If no finding of an aggravating factor is made, the court may enter a finding of insufficient evidence to support an aggravated sentence.
(e) ~~Such a~~A motion for a judgment of acquittal or that the evidence is insufficient to sustain an aggravated sentence is not barred by ~~defendant's~~ a failure to ~~make a similar motion prior to the submission of the case to the jury~~move before deliberations.	(e) A motion for a judgment of acquittal or that the evidence is insufficient to sustain an aggravated sentence is not barred by a failure to move before deliberations.
Subd. ~~18~~19. Instructions.	Subd. 19. Instructions.
(1) Requests for Instructions. ~~At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon the requests prior to the arguments to the jury, and such action shall be made a part of the record.~~Any party may request specific jury instructions at or before the close of evidence. The request must be provided to all parties.	(1) Requests for Instructions. Any party may request specific jury instructions at or before the close of evidence. The request must be provided to all parties.
(2) Proposed Instructions. The court may, and ~~upon request of any party shall~~on request must, ~~before the arguments to the jury, inform counsel~~tell the parties on the record before the arguments to the jury what instructions will be given ~~and all such instructions may be stated to the jury by either party as a part of the party's argument~~to the jury including a ruling on the requests made by any party.	(2) Proposed Instructions. The court may, and on request must, tell the parties on the record before the arguments to the jury what instructions will be given to the jury including a ruling on the requests made by any party.
(3) In Argument. Any party may refer to the instructions during final argument.	(3) In Argument. Any party may refer to the instructions during final argument.
(~~3~~4) Objections ~~to Instructions~~.	(4) Objections.
(a) No party may ~~assign as~~claim error ~~any portion of the charge or omission therefrom unless the party objects thereto before the jury retires to consider its verdict~~for any instruction not objected to before deliberation.	(a) No party may claim error for any instruction not objected to before deliberation.
(b) ~~The matter to which objection is made and the grounds of the objection shall be specifically stated~~The party's objection must state specific	(b) The party's objection must state specific grounds.

grounds. (c) ~~Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of~~The court must give the parties the opportunity to object outside the jury's presence~~ of the jury~~.	(c) The court must give the parties the opportunity to object outside the jury's presence.
(d) ~~All objections to instructions and the rulings thereon shall be included in~~The objection must be made on the record.	(d) The objection must be made on the record.
(e) All instructions, ~~whether~~ given or refused, ~~shall~~ must be made a part of the record.	(e) All instructions, given or refused, must be made a part of the record.
(f) ~~An error in the instructions with respect to~~Objections to instructions claiming error in fundamental law or controlling principle may be ~~assigned~~ included in a motion for a new trial ~~though it was not otherwise called to the attention of the court~~even if not raised before deliberations.	(f) Objections to instructions claiming error in fundamental law or controlling principle may be included in a motion for a new trial even if not raised before deliberations.
(~~4~~5) ~~Giving~~Giving of Instructions. The court ~~in its discretion shall~~may instruct the jury ~~either~~ before or after ~~the arguments are completed except, at the discretion of the court,~~argument. ~~preliminary~~ Preliminary instructions need not be repeated. The instructions may be in writing ~~and in the discretion of the court a copy~~and may be taken ~~to~~ into the jury room ~~when the jury retires for deliberation~~during deliberations.	(5) Giving of Instructions. The court may instruct the jury before or after argument. Preliminary instructions need not be repeated. The instructions may be in writing and may be taken into the jury room during deliberations.
(~~5~~6) Contents of Instructions. ~~In charging the jury the~~The court ~~shall state~~must instruct the jury on all matters of law ~~which are~~ necessary ~~for the jury's information in rendering~~to render a verdict and ~~shall inform~~must instruct the jury that ~~it is~~they are the exclusive ~~judge~~ judges of ~~all questions of fact~~the facts. The court ~~shall~~ must not comment on ~~the~~ evidence or ~~the~~ witness credibility ~~of the witnesses~~, but may state the respective claims of the parties.	(6) Contents of Instructions. The court must instruct the jury on all matters of law necessary to render a verdict and must instruct the jury that they are the exclusive judges of the facts. The court must not comment on evidence or witness credibility, but may state the respective claims of the parties.
(~~7~~6)~~.~~ Verdict Forms. The court ~~shall~~ must submit appropriate verdict forms ~~of verdict~~ to the jury ~~for its consideration~~. ~~Where an~~An aggravated sentence ~~is sought, the court shall submit the issue(s) to the jury by~~form must be in the form of a special interrogatory.	(7) Verdict Forms. The court must submit appropriate verdict forms to the jury. An aggravated sentence form must be in the form of a special interrogatory.
Subd. ~~19~~20. Jury Deliberations and Verdict.	Subd. 20. Jury Deliberations and Verdict.
(1) Materials ~~to~~ Allowed in Jury Room. The court ~~shall~~ must permit ~~the jury, upon retiring for deliberation, to take to the jury room exhibits which have been received in evidence, or copies thereof,~~received exhibits or copies, except depositions, ~~and may permit a copy of the~~	(1) Materials Allowed in Jury Room. The court must permit received exhibits or copies, except depositions, into the jury room. The court may permit a copy of jury instructions into the jury room.

~~instructions to be taken to the jury room~~into the jury room. The court may permit a copy of jury instructions into the jury room.	
(2) ~~Jury~~ Requests to Review Evidence. The court may allow the jury to review specific evidence.	(2) Requests to Review Evidence. The court may allow the jury to review specific evidence.
~~1.~~(a) If the jury~~, after retiring for deliberation,~~ requests ~~a~~ review of ~~certain testimony or others~~specific evidence~~,~~ during deliberations, the court may permit review of that evidence after notice to the parties. ~~the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to re-examine the requested materials admitted into 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.
~~2.~~(b) The court need not submit evidence ~~to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give~~beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence ~~requested~~.	(b) 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.
(3) Additional Instructions ~~After Jury Retires~~. If the jury asks for additional instruction on the law during deliberation, the court must give notice to the parties. The court's response must be given in the courtroom.	(3) Additional Instructions. If the jury asks for additional instruction on the law during deliberation, the court must give notice to the parties. The court's response must be given in the courtroom.
~~1.~~(a) ~~If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless: (a) the jury may be adequately informed by directing their attention to some portion of the original instructions; (b) the request concerns matters not in evidence or questions which do not pertain to the law of the case; or (c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.~~The court may give additional instructions.	(a) The court may give additional instructions.
(b) The court may reread portions of the original instructions.	(b) The court may reread portions of the original instructions.
(c) The court may tell the jury that the request deals with matters not in evidence or not related to the law of the case.	(c) The court may tell the jury that the request deals with matters not in evidence or not related to the law of the case.
(d) The court may tell the jury that the	(d) The court may tell the jury that the

request is a factual matter that the jury, not the judge, must determine.	request is a factual matter that the jury, not the judge, must determine.
(e)~~2.~~ The court need not give ~~additional~~ instructions beyond ~~those specifically requested by the jury~~the jury's request, but ~~in its discretion the court may also give or repeat other instructions to~~ may do so to avoid giving undue prominence to the requested instructions.	(e) The court need not give instructions beyond the jury's request, but may do so to avoid giving undue prominence to the requested instructions.
~~3~~(f)~~.~~ The court ~~after notice to the prosecutor and defense counsel may recall the jury after it has retired and give any additional instructions as the court deems appropriate.~~may give additional instructions without a jury request during deliberations. The court must give notice to the parties of its intent to give additional instructions.	(f) The court may give additional instructions without a jury request during deliberations. The court must give notice to the parties of its intent to give additional instructions.
(4) Deadlocked Jury. The jury may be discharged without ~~having agreed upon~~ a verdict if ~~it appears that~~the court finds there is no reasonable probability of agreement.	(4) Deadlocked Jury. The jury may be discharged without a verdict if the court finds there is no reasonable probability of agreement.
(5) Polling the Jury.	(5) Polling the Jury.
~~When a verdict on the issue of guilt is rendered and before the jury has been discharged, the jury shall be polled at the request of any party or upon the court's initiative. When the jury has answered special interrogatories relating to an aggravated sentence, the jury shall be polled at the request of any party or upon the court's initiative as to their answers.~~(a) When a verdict is returned, or the jury answered special interrogatories related to an aggravated sentence, and before the jury is discharged, either party may request that the jury be polled. The court must poll the jury on request. The court may poll the jury on its own initiative.	(a) When a verdict is returned, or the jury answered special interrogatories related to an aggravated sentence, and before the jury is discharged, either party may request that the jury be polled. The court must poll the jury on request. The court may poll the jury on its own initiative.
(b) The poll~~(s) shall be conducted~~ must be done by the court or ~~clerk of~~the ~~court~~ court's clerk. ~~who shall ask each~~Each juror must be asked individually whether the announced verdict or finding ~~announced~~ is ~~the~~ that juror's verdict or finding.	(b) The poll must be done by the court or the court's clerk. Each juror must be asked individually whether the announced verdict or finding is that juror's verdict or finding.
(c)~~If either poll does not conform to the verdict, the jury may be directed to retire for further deliberation or may be discharged~~ If a juror indicates the announced verdict or finding is not that juror's verdict or finding, the court may return the jury to deliberations or discharge the jury.	(c) If a juror indicates the announced verdict or finding is not that juror's verdict or finding, the court may return the jury to deliberations or discharge the jury.
(6) ~~Impeachment of~~ Verdict Impeachment. ~~Affidavits of jurors shall not be received in evidence to impeach their verdict. A defendant who has reason to believe that the verdict is subject to impeachment, shall move the court for a~~	(6) Verdict Impeachment. A defendant may move the court for a hearing to impeach the verdict. Juror affidavits are not admissible to impeach a verdict. At an impeachment hearing, jurors must be examined under oath and their testimony

~~summary hearing. If the motion is granted the jurors shall be interrogated~~A defendant may move the court for a hearing to impeach the verdict. Juror affidavits are not admissible to impeach a verdict. At an impeachment hearing, jurors must be examined under oath and their testimony recorded. ~~The~~ Minnesota Rule of Evidence 606(b) governs the admissibility of evidence at ~~the~~ an impeachment hearing~~ shall be governed by Rule 606(b) of the Minnesota Rules of Evidence~~.	recorded. Minnesota Rule of Evidence 606(b) governs the admissibility of evidence at an impeachment hearing.
(7) Partial ~~Verdict~~Verdicts. The court may accept a partial verdict ~~when~~ if the jury has ~~agreed on~~reached a verdict on ~~less~~fewer than all of the charges ~~submitted, but~~and is unable to ~~agree on the remainder~~reach a verdict on the rest.	(7) Partial Verdicts. The court may accept a partial verdict if the jury has reached a verdict on fewer than all of the charges and is unable to reach a verdict on the rest.
Rule 26.04 Post-Verdict Motions	**Rule 26.04 Post-Verdict Motions**
Subd. 1. New Trial On Defendant's Motion.	Subd. 1. New Trial On Defendant's Motion.
(1) Grounds. The court may – on written motion of ~~the~~a defendant – ~~may~~ grant a new trial on the issue of guilt or the existence of facts to support an aggravated sentence, or both, on any of the following grounds:	(1) Grounds. The court may – on written motion of a defendant – grant a new trial on the issue of guilt or the existence of facts to support an aggravated sentence, or both, on any of the following grounds:
1. ~~If required in the~~The interests of justice;	1. The interests of justice;
2. Irregularity in the proceedings~~ of the court, jury, or on the part of the prosecution~~, or any order or abuse of discretion~~, whereby~~ that deprived the defendant ~~was deprived~~ of a fair trial;	2. Irregularity in the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial;
3. ~~Misconduct of the~~Prosecutorial or jury ~~or prosecution~~misconduct;	3. Prosecutorial or jury misconduct;
4. Accident or surprise ~~which~~that could not have been prevented by ordinary prudence;	4. Accident or surprise that could not have been prevented by ordinary prudence;
5. ~~Material~~Newly discovered material evidence, ~~newly discovered,~~ which with reasonable diligence could not have been found and produced at the trial;	5. Newly discovered material evidence, which with reasonable diligence could not have been found and produced at the trial;
6. Errors of law ~~occurring~~ at ~~the~~ trial, and objected to at the time ~~or, if~~unless no objection is required by these rules~~, assigned in the motion~~;	6. Errors of law at trial, and objected to at the time unless no objection is required by these rules;
7. ~~The~~A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.	7. A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.
(2) Basis of Motion. A motion for new trial ~~shall~~must be ~~made and heard~~based on the ~~files, exhibits and minutes of the court~~record. Pertinent facts that ~~would~~are not ~~be a part of~~in the ~~minutes~~record may be ~~shown~~submitted by affidavit, except as otherwise provided by these	(2) Basis of Motion. A motion for new trial must be based on the record. Pertinent facts that are not in the record may be submitted by affidavit, except as otherwise provided by these rules. A full or partial transcript or other verbatim recording of the testimony taken at trial may be used during the

rules. A full or partial transcript or other verbatim recording ~~of the court reporter's notes~~ of the testimony taken at ~~the~~ trial ~~or other verbatim recording thereof~~ may be used ~~on~~during the motion hearing ~~of the motion~~.	motion hearing.
(3) Time for Motion. Notice of a motion for a new trial ~~shall~~must be served within 15 days after a verdict or finding of guilty. The motion ~~shall~~must be heard within 30 days after the verdict or finding of guilty, unless the time for hearing ~~be~~is extended by the court for good cause within the 30-day period ~~for good cause shown~~.	(3) Time for Motion. Notice of a motion for a new trial must be served within 15 days after a verdict or finding of guilty. The motion must be heard within 30 days after the verdict or finding of guilty, unless the time for hearing is extended by the court for good cause within the 30-day period.
(4) Time for Serving Affidavits. ~~When~~If a motion for a new trial is based on affidavits, the~~y~~ affidavits ~~shall~~must be served with the notice of motion. The opposing party ~~shall~~will then have 10 days ~~after such service in which~~ to serve ~~opposing~~ affidavits~~., which~~The 10-day period may be extended by the court ~~upon an order extending the time for hearing under this rule~~ for good cause. The court may permit reply affidavits.	(4) Time for Serving Affidavits. If a motion for a new trial is based on affidavits, the affidavits must be served with the notice of motion. The opposing party will then have 10 days to serve affidavits. The 10-day period may be extended by the court for good cause. The court may permit reply affidavits.
Subd. 2. New Trial on Court's Initiative. The court may – on its own initiative and with the consent of the defendant – order a new trial on any of the grounds specified in subdivision 1(1) within 15 days after a verdict or finding of guilty.	Subd. 2. New Trial on Court's Initiative. The court may – on its own initiative and with the consent of the defendant – order a new trial on any of the grounds specified in subdivision 1(1) within 15 days after a verdict or finding of guilty.
Subd. ~~2~~3. Motion to Vacate Judgment. The court must – on motion of a defendant – ~~shall~~ vacate judgment, if entered, and dismiss the case if the indictment, complaint, or tab charge does not charge an offense, or if the court ~~was without~~did not have jurisdiction ~~of~~over the offense charged. The motion ~~shall~~must be made within 15 days after a verdict or finding of guilty, ~~or~~ after a plea of guilty, or within ~~such~~ a time ~~as~~ set by the court ~~may fix~~ during the 15-day period. If the motion is granted, the court ~~shall~~ must make written findings specifying its reasons for vacating the judgment and dismissing the case.	Subd. 3. Motion to Vacate Judgment. The court must – on motion of a defendant – vacate judgment, if entered, and dismiss the case if the indictment, complaint, or tab charge does not charge an offense, or if the court did not have jurisdiction over the offense charged. The motion must be made within 15 days after a verdict or finding of guilty, after a plea of guilty, or within a time set by the court during the 15-day period. If the motion is granted, the court must make written findings specifying its reasons for vacating the judgment and dismissing the case.
~~Subd. 3. Joinder of Motions. Any motions for judgment of acquittal or to vacate judgment shall be joined with a motion for a new trial.~~	
~~Subd. 4. New Trial on Court's Initiative. The court, within 15 days after verdict or finding of guilty, with the consent of the defendant, may order a new trial upon any of the grounds specified in Rule 26.04, subd. 1(1).~~	

Comments	Comments
Rule 26.01, subd. 1(1) (Right to Jury Trial). In cases of felonies ~~(Minn. Stat. § 609.02, subd. 2 (1971))~~ and gross misdemeanors, ~~(Minn. Stat. §§ 609.02, subd. 4, 609.03(2) (1971))~~ the defendant ~~is entitled~~ 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 ~~(1971)~~. ~~(~~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~~194, 88 S.Ct. 1444, 20 L.Ed.2d 491, 522~~ (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~~),~~ ~~there would usually be~~ no federal constitutional right exists to a jury trial on a misdemeanor.* *~~There is, however~~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).~~;~~ ~~State v. Ketterer, 248 Minn. 173, 79 N.W.2d 136 (1956); State ex rel. Erickson v. West, 42 Minn. 147, 43 N.W. 845 (1889); and City of Mankato v. Arnold, 36 Minn. 62, 30 N.W. 305 (1886).~~* *~~Beyond these constitutional requirements, present statutory law provides for the right to a jury trial at some stage in the proceedings in all prosecutions for the violation of misdemeanors punishable by incarceration. The defendant, however, might not be able to exercise this right to a jury trial until appeal to district court for a trial de novo. As to the right to a jury trial in Hennepin or Ramsey County, either initially or upon a trial~~*	*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)(b) establishes the procedure for waiver of 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.*

~~*de novo in district court, see Minn. Stat. §§ 484.63 (appeals to district court); 488A.10, subd. 6 (appeals from Hennepin County Municipal Court); and 488A.27, subd. 6 (appeals from Ramsey County Municipal Court after January 1, 1975); and State v. Hoben, 256 Minn. 436, 98 N.W.2d 813 (1959) (jury trial in municipal court for traffic ordinance violations).*~~

~~*In county courts governed by Minn. Stat. Ch. 487 (which includes all but Hennepin and Ramsey County) a defendant has a right to a jury trial in any prosecution for the violation of a statutory misdemeanor punishable by incarceration (see Minn. Const. Art. 1, § 6), or of any non statutory misdemeanor whether or not punishable by incarceration (see Minn. Stat. § 487.25, subd. 6). There is no right to a jury trial in a prosecution for the violation of a statutory misdemeanor not punishable by incarceration (see Minn. Stat. §§ 169.89, subd. 2 and 633.02).*~~

~~*Under Rule 26.01, subd. 1(1)(a) defendants prosecuted for misdemeanors will have the right to a jury trial if and only if the misdemeanor charged is punishable by incarceration. This will be so whether the misdemeanor is proscribed by statute, ordinance or otherwise, and whether it is a traffic or non-traffic offense. Minn. Stat. §§ 488A.10, subd. 6 (Hennepin County) and 488A.27, subd. 6 (Ramsey County after January 1, 1975) to the extent they provide otherwise are superseded. Also, Minn. Stat. § 487.24, subd. 6, to the extent it might be interpreted to permit a jury trial in a prosecution for the violation of a misdemeanor not punishable by incarceration is superseded. It is the opinion of the Advisory Committee that there should be no difference in the right to a jury trial in the different areas of the state. The committee anticipated that the power of the prosecutor under Rule 23.04 to treat many minor misdemeanors now punishable by incarceration as petty misdemeanors with the consent of the defendant should prevent any large backlog of jury cases from developing. Under Rule 23.05, subd. 1 a defendant is not entitled to a jury trial if the offense is to be treated (see Minn. Stat. Ch. 487) as a petty misdemeanor under Rule 23.04. Also, the broadened use of violations bureaus permitted under Rule 23.03 if implemented by the courts should result in fewer jury and court trial*~~

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.

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). This rule supersedes Lothenbach as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling.

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.

On a finding under Rule 26.02, subd. 2(2) that there is strong reason to believe dissemination of juror information poses a threat to juror safety or impartiality, the court may enter an order that information regarding identity, including names, telephone numbers, and addresses of prospective jurors be withheld from the public, parties, and counsel. See State v. Bowles, 530 N.W.2d 521,

~~*demands.*~~

~~*Rule 26.01, subd. 1(1)(b) providing that there shall be no jury trial at any stage in the prosecution of a misdemeanor not punishable by incarceration is largely consistent with present statutory law. See Minn. Stat. §§ 484.63 and 488.20 (appeals to district court); Minn. Stat. §§ 169.89, subd. 2 and 633.02 (statutory petty misdemeanors); Minn. Stat. § 488A.10, subd. 6 (Ramsey County Municipal Court after January 1, 1975). To the extent Minn. Stat. § 487.25, subd. 6 is inconsistent with Rule 26.01, subd. 1(1)(b) it is superseded.*~~

~~*Rule 26.01, subd. 1(2)(a) (Waiver of Trial by Jury on the Issue of Guilt) is based upon F.R.Crim.P. 23(a), ABA Standards, Trial by Jury, 1.2(b) (Approved Draft, 1968) and continues substantially present Minnesota law (Minn. Stat. § 631.01 (1971)) except that waiver of jury trial by the defendant requires the approval of the court.*~~ *Rule 26.01, subd. 1(2)(b) establishes the procedure for waiver of a jury on the issue of an aggravated sentence. See* *generally* *Blakely v. Washington, 542 U.S. 296*~~*, 124 S.Ct. 2531*~~ *(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* ~~*is still entitled to*~~*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)* ~~*is necessary*~~ *must be made before an aggravated sentence may be imposed based on findings not made by jury trial.*

~~*Rule 26.01, subd. 1(2)(c) (Waiver When Prejudicial Publicity). Under Rule 26.01, subd. 1(2)(c) the defendant shall be permitted to waive jury trial if required to assure the likelihood of a fair trial when there has been a dissemination of potentially prejudicial material. (See ABA Standards, Fair Trial and Free Press, 3.3 (Approved Draft, 1968).)*~~

Rule 26.01, subd. 1(3) (Withdrawal of *Jury-*

530-31 (Minn. 1995); State v. McKenzie, 532 N.W.2d 210, 219 (Minn. 1995). The restrictions ordered by the court may extend through trial and beyond as necessary to protect the safety and impartiality interests involved. To protect the identity of jurors and prospective jurors, the court may order that they be identified by number or other method and may prohibit pictures or sketches in the courtroom. The court's decision will be reviewed under an abuse of discretion standard.

The court must recognize that not every trial where there is a threat to jurors' impartiality will require restriction on access to information about jurors. The decision to restrict access to information on jurors must be made in the light of reason, principle, and common sense.

In ensuring that restriction on the parties' access to information about the jurors does not have a prejudicial effect on the defendant, the court must take reasonable precautions to minimize the potential for prejudice. The court must allow voir dire on the effect that restricting access to juror identification may have on the impartiality of the jurors. The court should also instruct the jurors that the jury selection procedures do not in any way suggest the defendant's guilt.

Rule 26.02, subd. 2(3) (Jury Questionnaire). The use of a written jury questionnaire has proved to be a useful tool in obtaining information from prospective jurors in criminal cases. The written questionnaire provided in the Criminal Forms following these rules includes generally non-sensitive questions relevant to jury selection in any criminal case. See Form 50 for the Jury Questionnaire. Additionally the court on its own initiative or on request of counsel may submit to the prospective jurors as part of the questionnaire other questions that might be helpful based on the particular case to be tried.

Once the panel of prospective jurors for a particular case has been determined, the judge or court personnel will instruct the panel on the use of the questionnaire. The preamble at the beginning of the Jury Questionnaire (Form 50) provides the basic information to the prospective

Trial Waiver ~~of Jury Trial~~) ~~continues present Minnesota law (Minn. Stat. § 631.01 (1971)) and~~ provides that waiver of jury trial may be withdrawn before commencement of trial. Trial ~~is commenced~~ begins when jeopardy attaches. ~~See comment to Rule 25.02.~~

~~Rule 26.01, subd. 1(4) (Waiver of Number of Jurors Required by Law) is drawn from F.R.Crim.P. 23(b) and ABA Standards, Trial by Jury, 1.3 (Approved Draft, 1968). (See also State v. Sackett, 39 Minn. 69, 38 N.W. 773 (1888).) The number of jurors required by law for felonies is 12 and for gross misdemeanors and misdemeanors is 6. (Minn. Stat. § 593.01 (1989).) (A jury of 6 would not contravene the United States Constitution. Williams v. Florida, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).) The Minnesota Supreme Court held in State v. Hamm, 423 N.W.2d 379 (Minn.1988) that the provision in Minn. Stat. § 593.01 for 6-member juries in misdemeanor and gross misdemeanor cases violated the state constitution. After that decision Article 1, § 6 of the Minnesota Constitution was amended in 1988 to permit the legislature to provide for 6-member juries in non-felony criminal cases. The legislature re-enacted Minn. Stat. § 593.01, subd. 1, effective February 9, 1989.~~

~~Rule 26.01, subd. 1(5) (Number Required for Verdict) requires a unanimous verdict for felonies, gross misdemeanors, and misdemeanors and so continues existing law in those cases. (Minn. Stat. § 593.01 (1971).) (See also State v. Everett, 14 Minn. 439 (1869) (Gil 330).)~~

~~Rule 26.01, subd. 1(6) (Waiver of Unanimous Verdict) continues present Minnesota law. (State v. Zubrocki, 194 Minn. 346, 260 N.W. 507 (1935).) It is based on ABA Standards, Trial by Jury, 1.1(3) (Approved Draft, 1968) except that the defendant's consent is necessary for a less than unanimous verdict.~~

~~Rule 26.01, subd. 2 (Trial Without a Jury) requiring special findings in a case tried to the court is taken from F.R.Crim.P. 23(c), and in addition prescribes time limits for general findings and for special findings. Rule 14.01 prescribes the pleas referred to in the rule. The consequences of an omission of a finding on an essential fact comes~~

jurors including their right to ask the court to permit them to answer any sensitive question orally or privately. On completion of the questionnaire, the court must make the questionnaire available to counsel for use in the jury selection process. The questionnaire may be sworn to either when signed or when the prospective juror appears in court at the time of the voir dire examination. Because of the information contained in the questionnaire, counsel will not need to expend court time on this information, but can move directly to follow-up questions on particular information already available in the questionnaire. However, the written questionnaire is intended only to supplement and not to substitute for the oral voir dire examination provided for by Rule 26.02, subd. 4.

The use and retention of jury questionnaires have been subject to a variety of practices. This rule provides that the questionnaire is a part of the jury selection process and part of the record for appeal and reflects current law. As such, the questionnaires should be preserved as part of the court record of the case. See Rule 814 of the General Rules of Practice for the District Courts as to the length of time such records must be retained. Additionally, see Rule 26.02, subd. 2(2) as to restricting public access to the names, addresses, telephone numbers, and other identifying information concerning jurors and prospective jurors when the court determines that an anonymous jury is necessary.

It is recognized that the idea of the privacy of the questionnaire adds to the candor and honesty of the responses of the prospective jurors. However, in light of other applicable laws and the fact that the questionnaire is part of the record in the case, prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case. Rather, the jurors can be told, as reflected in the preamble to the Jury Questionnaire (Form 50), that they can ask the court to permit them to answer sensitive questions orally and privately under Rule 26.02, subd. 4(4). This procedure should minimize the sensitive or embarrassing information in the written questionnaires and consequently the need for sealing or destroying them.

~~from Minn.R.Civ.P. 49(a). The provision in Rule 26.01, subd. 3 (Trial on Stipulated Facts) for submitting the case to the court for decision on stipulated facts is in accord with ABA Standards for Criminal Justice 21-1.3(c) (1985). In addition to determining guilt, the trial on stipulated facts provisions of subdivision 3 could be used for determining whether aggravated facts exist to support an upward sentencing departure under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004).~~

The rules do not permit conditional pleas of guilty ~~where~~by which the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. ~~State v. Lothenbach, 296 N.W.2d 854 (Minn.1980).~~ Rule 26.01, subd. 4 ~~(Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling),~~ implements the procedure authorized by State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980). ~~The rule~~This rule supersedes ~~the case~~Lothenbach as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling. ~~The~~ This rule also distinguishes the Lothenbach-type procedure it implements from Rule 26.01, subd. 3 (Trial on Stipulated Facts). ~~The latter rule~~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 ~~otherwise~~ 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, ~~the rule~~Rule 26.01, subd. 4 could be used.

Jury selection is a part of the criminal trial record which is presumed to be open to the public. Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501, 505 (1984). The use of a jury questionnaire as part of jury selection is also a part of the open proceeding and therefore the public and the media have a right of access to that information in the usual case. See, e.g., Lesher Commc'ns, Inc. v. Superior Court of Contra Costa County, 224 Cal. App. 3d 774, 779 (1990).

Rule 26.02, subd. 4(1) (Purpose of Voir Dire Examination--How Made). The provision of this rule governing the purpose for which voir dire examination must be conducted and the provision for initiation of the examination by the judge is taken from ABA Standards, Trial by Jury, 2.4 The court has the right and the duty to assure that the inquiries by the parties during the voir dire examination are "reasonable". The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper. See State v. Greer, 635 N.W.2d 82, 87 (Minn. 2001) (holding no error in district court's restrictions on voir dire); State v. Bauer, 189 Minn. 280, 282, 249 N.W. 40, 41 (1933). However, the Minnesota Supreme Court's Task Force on Racial Bias in the Judicial System recommends in its Final Report, dated May 1993, that during voir dire lawyers should be given ample opportunity to inquire of jurors as to racial bias.

Rule 26.02, subd. 4(3) (Order of Drawing, Examination, and Challenge of Jurors). The purpose of this rule is to achieve uniformity in the order of drawing, examination, and challenge of jurors, but also to provide a limited number of alternatives that may be followed, in the court's discretion. Hence, a uniform rule (26.02, subd. 4(3)(b)) is prescribed which is to be followed unless the court orders the alternative. Rule 26.02, subd. 4(3)(c). An exception is that in cases of first degree murder, Rule 26.02, subd. 4(3)(d) is to be preferred unless otherwise ordered by the court.

Rule 26.02, subd. 4(3)(b) is the rule to be followed unless the court orders otherwise and substantially adopts the method used in civil cases,

~~*Rule 26.02 (Selection of Jury). Rule 26.02, subd. 1 (Selection and Qualifications (of Jury)) continues present statutory law for the selection, drawing, and summoning of the trial jury (see Minn. Stat. §§ 593.02, 593.04, 593.13, 593.14, 593.17, 628.43, 628.44, 628.54 (1971) for the qualifications of jurors. See §§ 593.03, 593.05- 593.07, 593.09- 593.13, 593.135, 593.14 for the selection, drawing, and summoning of jurors.) except that to satisfy constitutional requirements, it provides that the persons on the jury list from which the jury panel is drawn shall be selected at random from a fair cross-section of the residents of the county who are qualified to serve as jurors. (See a similar provision in Rule 18.01, subd. 2 governing the selection of the grand jury list.) (See also ABA Standards, Trial by Jury, 2.1(a) (Approved Draft, 1968).)*~~

~~*Rule 26.02, subd. 2(1) (List of Prospective Jurors) which provides that information about prospective jurors which is obtained by the jury clerk, including names and addresses, shall in the usual case be made available to the parties and counsel upon request is taken from ABA Standards, Trial by Jury, 15 2.2 (Approved Draft, 1978) and also provides that in addition to the jury list, the parties shall have access to such other information concerning the jurors as may be available at the clerk's office.*~~

~~*In the rare case, where there is a belief that dissemination of this information poses a threat to juror safety or impartiality, Rule 26.02, subd. 2(2) (Anonymous Jurors) provides for a hearing upon a party's motion that the jurors' names, addresses, telephone numbers and other identifying information not be distributed. At the hearing, the moving party will have an opportunity to present evidence and argument that there is reason to believe that the jury needs protection from external threats to its members' safety and impartiality. Upon*~~*On a finding under Rule 26.02, subd. 2(2) that there is strong reason to believe ~~that this condition exists~~dissemination of juror information poses a threat to juror safety or impartiality, the court may enter an order that information regarding identity, including names, telephone numbers, and addresses of prospective jurors be withheld from the public, parties, and so that in a criminal case 20 members of the jury panel are first drawn for a 12-person jury. See Minn. Stat. § 546.10; Minn. R. Civ. P. 48. After each party has exercised challenges for cause, commencing with the defendant, they exercise their peremptory challenges alternately, commencing with the defendant. If all peremptory challenges are not exercised, the jury must be selected from the remaining prospective jurors in the order in which they were called.*

Rule 26.02, subd. 5(1) (Grounds of Challenge for Cause). For the definition of a felony conviction that would disqualify a person from service on the jury, see Minn. Stat. § 609.13. The term "related offense" in the rule is intended to be more comprehensive than the conduct or behavioral incident covered by Minn. Stat. § 609.035.

Rule 26.02, subd. 7 (Objections to Peremptory Challenges) adopts and implements the equal protection prohibition against purposeful racial and gender discrimination in the exercise of peremptory challenges established in Batson v. Kentucky, 476 U.S. 79 (1986) and subsequent cases, including J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994) (extending the rule to gender-based discrimination). In applying this rule, the bench and bar should thoroughly familiarize themselves with the case law that has developed, particularly with respect to meanings of the terms "prima facie showing," "race-neutral explanation," "pretextual reasons," and "purposeful discrimination" used in the rule. See also State v. Davis, 504 N.W.2d 767 (Minn. 1993) (declining to extend the rule to religion), cert. denied sub. nom Davis v. Minnesota, 511 U.S. 1115 (1994).

The interpreter requirement in Rule 26.03, subd. 1(1) derives from Rule 8 of the General Rules of Practice for the District Courts and Minn. Stat. §§ 611.30- 611.34.

Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses). A defendant's refusal to wear non-jail attire waives this provision and is not grounds for delaying the trial. A list of factors relevant to the decision to employ restraints is found in State v. Shoen, 578 N.W.2d

counsel. See State v. Bowles, 530 N.W.2d 521, 530-31 (Minn. 1995); State v. McKenzie, 532 N.W.2d 210, 219 (Minn. 1995). The restrictions ordered by the court may extend through trial and beyond as necessary to protect the safety and impartiality interests involved. To protect the identity of jurors and prospective jurors, the court may order that they be identified by number or other method and may prohibit pictures or sketches in the courtroom. ~~These procedures and protections are in accord with recommendation 22 of the Minnesota Supreme Court Jury Task Force Final Report of December 20, 2001.~~ The ~~trial~~ court's decision will be reviewed under an abuse of discretion standard.

The ~~trial~~ court must recognize that not every trial where there is a threat to jurors' impartiality will require restriction on access to information about jurors. The decision to restrict access to information on jurors must be made in the light of reason, principle, and common sense.

In ensuring that restriction on the parties' access to information about the jurors does not have a prejudicial effect on the defendant, the ~~trial~~ court must take reasonable precautions to minimize the potential for prejudice. The court must allow voir dire on the effect that restricting access to juror identification may have on the impartiality of the jurors. The court should also instruct the jurors that the jury selection procedures do not in any way suggest the defendant's guilt.

Rule 26.02, subd. 2(3) (Jury Questionnaire). The use of a written jury questionnaire has proved to be a~~n extremely~~ useful tool in obtaining information from prospective jurors in criminal cases. ~~While its use has been primarily reserved for serious felony cases, experience has established that expanded use of this tool will increase the amount of important information provided by prospective jurors and also make for a more efficient jury selection process. This rule approves of the use of a written questionnaire on a wider scale and provides the procedure for its use.~~ The written questionnaire provided in the Criminal Forms following these rules~~,~~ includes generally non-sensitive questions relevant to jury selection in any criminal case. See Form 50 for 708, 713 (Minn. 1998).

Rule 26.03, subd. 5(3) requires the consent of the defendant and prosecutor when ordering jurors to separate overnight during deliberation. In State v. Green, 719 N.W.2d 664, 672-73 (Minn. 2006), the Minnesota Supreme Court concluded that a district court did not commit error in releasing jurors for the night when no hotel accommodations could be found within a reasonable distance of the courthouse despite an exhaustive effort, neither party could propose a means of accomplishing sequestration, and the trial court instructed jurors to have no discussions about the case and to not read newspapers, watch television, or listen to the radio.

Rule 26.03, subd. 6 (Exclusion of Public From Hearings or Arguments Outside the Presence of the Jury) reflects Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550, 559-60 (Minn. 1983), which established similar procedures for excluding the public from pretrial hearings. See the comment to Rule 25.01 concerning those procedures.

Rule 26.03, subd. 12 (Order of Jury Trial) substantially continues the order of trial under existing practice. See Minn. Stat. § 546.11. The order of closing argument, under sections "h," "i," "j," and "k" of this rule reflects a change. The prosecution argues first, then the defense. The prosecution is then automatically entitled to rebuttal argument. However, this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument. Allowance of the rebuttal argument to the prosecution should result in a more efficient and less confusing presentation to the jury. The prosecution will need to address only those defenses actually raised by the defendant rather than guessing, perhaps wrongly, about those defenses. In the event that the prosecution engages in improper rebuttal, paragraph "k" of the rule provides, upon motion, for a limited right of rebuttal to the defendant to address misstatements of law or fact and any inflammatory or prejudicial statements. The court has the

the Jury Questionnaire. Additionally the court on its own initiative or on request of counsel may submit to the prospective jurors as part of the questionnaire other ~~written~~ questions that ~~may elicit sensitve information~~ might be helpful based on the particular case to be tried.

Once the panel of prospective jurors for a particular case has been determined, the judge or court personnel will instruct the panel on the use of the questionnaire. The preamble at the beginning of the Jury Questionnaire (Form 50) provides the basic information to the prospective jurors including their right to ask the court to permit them to answer any sensitive question orally or privately. ~~Upon~~ On completion of the questionnaire, the court ~~shall~~ must make the questionnaire available to counsel for use in the jury selection process. The questionnaire may be sworn to either when signed or when the prospective juror appears in court at the time of the voir dire examination. Because of the information contained in the questionnaire, counsel will not need to expend court time on this information, but can move directly to follow-up questions on particular information already available in the questionnaire. However, the written questionnaire is intended only to supplement and not to substitute for the oral voir dire examination provided for by Rule 26.02, subd. 4.

The use and retention of jury questionnaires have been subject to a variety of practices. This rule provides that the questionnaire is a part of the jury selection process and part of the record for appeal and reflects current law. As such, the questionnaires should be preserved as part of the court record of the case. See Rule 814 of the General Rules of Practice for the District Courts as to the length of time such records must be retained. Additionally, see Rule 26.02, subd. 2(2) as to restricting public access to the names, addresses, telephone numbers, and other identifying information concerning jurors and prospective jurors when the court determines that an anonymous jury is necessary.

It is recognized that the idea of the privacy of the questionnaire adds to the candor and honesty of the responses of the prospective jurors. inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in earlier arguments. It is the responsibility of the court to ensure that final argument to the jury is kept within proper bounds. ABA Standards for Criminal Justice: Prosecution Function and Defense Function, standards 3-5.8 & 4-7.7 (3d ed. 1993). If the argument is sufficiently improper, the trial judge should intervene, even without objection from opposing counsel. See State v. Salitros, 499 N.W.2d 815, 817 (Minn. 1993); State v. White, 295 Minn. 217, 223, 203 N.W.2d 852, 857 (1973).

Under Rule 26.03, subd. 14, a party is not foreclosed from later serving and filing a notice to remove a judge who simply presided at an appearance under Rule 5 or Rule 8 in the case. Also under that rule, a judge should disqualify himself or herself "whenever the judge has any doubt as to his or her ability to preside impartially or whenever his or her impartiality reasonably might be questioned." ABA Standards for Criminal Justice: Special Functions of the Trial Judge, standard 6-1.9 (3d ed. 2000).

Rule 26.03, subd. 16 (Evidence) leaves to the Minnesota Rules of Evidence the issues of the admissibility of evidence and the competency of witnesses except as otherwise provided in these rules. As to the use of a deposition at a criminal trial, Rule 21.06 controls rather than the Minnesota Rules of Evidence if there is any conflict between them. See Rule 802 and the comments to Rule 804 in the Minnesota Rules of Evidence. The prohibition in Rule 26.03, subd. 16 against jurors submitting questions to witnesses is taken from State v. Costello, 646 N.W.2d 204, 214 (Minn. 2002).

Rule 26.03, subd. 16 provides that any party offering a videotape or audiotape exhibit may also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the

However, in light of other applicable laws and the fact that the questionnaire is part of the record in the case, prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case. Rather, the jurors can be told, as reflected in the preamble to the Jury Questionnaire (Form 50), that they can ask the court to permit them to answer sensitive questions orally and privately under Rule 26.02, subd. 4(4). This procedure should minimize the sensitive or embarrassing information in the written questionnaires and consequently the need for sealing or destroying them.

~~In addition to being part of the record in the case, jury~~Jury selection is a part of the criminal trial record which is presumed to be open to the public. Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501, 505 (1984) ~~(Press-Enterprise I)~~. The use of a jury questionnaire as part of jury selection is also a part of the open proceeding and therefore the public and the media have a right of access to that information in the usual case. See, e.g., Lesher ~~Communications~~Commnc'ns, Inc. v. Superior Court of Contra Costa County, 224 Cal. App. 3d 774, 779 (1990).

~~Rule 26.02, subd. 3 (Challenge to Panel) is based on ABA Standards, Trial by Jury, 2.3 (Approved Draft, 1968) and Minn. Stat. §§ 631.23, 631.24, 631.25 (1971) except that it substitutes an "objection" for the "exception" to the sufficiency of the challenge (Minn. Stat. § 631.24) and for the "denial" of the facts on which the challenge is based. (Minn. Stat. § 631.25 (1971).) If such an objection is made, the challenge is tried by the court.~~

Rule 26.02, subd. 4(1) (Purpose of Voir Dire Examination--~~By Whom~~How Made). The provision of this rule governing the purpose for which voir dire examination ~~shall~~ must be conducted and the provision for initiation of the examination by the judge is taken from ABA Standards, Trial by Jury, 2.4 ~~(Approved Draft, 1968). The last sentence of the rule permitting the parties to interrogate the jurors before exercising challenges continues the similar provision of Minn. Stat. § 631.26 (1971) with the limitation that the inquiry shall be "reasonable".~~ The court tape transcript as provided in Rule 28.02, subd. 9.

The provision in Rule 26.03, subd. 17 (Interpreters) allowing qualified interpreters for any juror with a sensory disability to be present in the jury room during deliberations and voting was added to the rule to conform with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. § 12101 et seq. Caselaw holding that the presence of an alternate juror during deliberations is considered to be presumptively prejudicial – e.g., State v. Crandall, 452 N.W.2d 708, 711 (Minn. App. 1990) – would not apply to such qualified interpreters present during deliberations. As to an interpreter's duties of confidentiality and to refrain from public comment, see respectively Canons 5 and 6 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

Rule 26.03, subd. 18 (Motion for Judgment of Acquittal or Insufficient Evidence for an Aggravated Sentence). A defendant is also entitled to a jury determination of any facts beyond the elements of the offense or conviction history that might be used to aggravate the sentence. Blakely v. Washington, 542 U.S. 296, 301 (2004); State v. Shattuck, 704 N.W.2d 131, 135 (Minn. 2005). If such a trial is held, the rule also provides that the defendant may challenge the sufficiency of the evidence presented.

Rule 26.03, subd. 19(7) (Verdict Forms) requires that where aggravated sentence issues are presented to a jury, the court shall submit the issues to the jury by special interrogatory. For a sample form for that purpose see CRIMJIG 8.01 of the Minnesota Criminal Jury Instruction Guide. When that is done, Rule 26.03, subd. 20(5) permits any of the parties to request that the jury be polled as to their answers.

Rule 26.03, subd. 20(4) (Deadlocked Jury). The kind of instruction that may be given to a deadlocked jury is left to judicial decision. In

has the right and the duty to assure that the inquiries by the parties during the voir dire examination are "reasonable". The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper. See ~~State v. Bauer, 189 Minn. 280, 249 N.W. 40 (1933) and~~ State v. Greer, 635 N.W.2d 82, 87 (Minn. 2001) (holding no error in district court's restrictions on voir dire); State v. Bauer, 189 Minn. 280, 282, 249 N.W. 40, 41 (1933). However, the Minnesota Supreme Court's Task Force on Racial Bias in the Judicial System recommends in its Final Report, dated May 1993, that during voir dire lawyers should be given ample opportunity to inquire of jurors as to racial bias.

~~*Rule 26.02, subd. 4(2)(a) (Sequestration of Jurors at Court's Discretion) gives the court the discretion to sequester jurors during the voir dire.*~~

~~*Rule 26.02, subd. 4(2)(b) (Prejudicial Publicity), following ABA Standards, Fair Trial and Free Press, 3.4(a) (Approved Draft, 1968), directs sequestration of the jurors during voir dire when there is a significant possibility that exposure to prejudicial publicity may result in disqualification of individual jurors. The standard (3.4(a)) recommends that the questioning should be conducted for the purpose of determining what the prospective juror has read and heard about the case and how that exposure has affected the prospective juror's attitude toward the trial, not to convince the prospective juror that it would be a dereliction of duty not to cast aside any preconceptions that might exist.*~~

Rule 26.02, subd. 4(3) (Order of Drawing, Examination, and Challenge of Jurors~~.~~). The purpose of this rule is to achieve uniformity in the order of drawing, examination, and challenge of jurors, but also to provide a limited number of alternatives that may be followed, in the court's discretion ~~of the trial court~~. Hence, a uniform rule (26.02, subd. 4(3)(b~~a~~)) is prescribed which is to be followed unless the court orders ~~that one of~~ the ~~two~~ alternative~~s~~, Rule 26.02, subd. 4(3)~~(b) or~~ (c)~~, shall be adopted in a particular case~~. An exception is that in cases of first degree murder, Rule 26.02, subd. 4(3)(d~~e~~) is to be preferred unless State v Buggs, 581 N.W.2d 329, 338 (Minn. 1998), the Supreme Court suggested the risk of error in jury instructions can be significantly reduced if the trial court uses CRIMJIG 3.04 when the jury asks for further instruction.

Rule 26.03, subd. 20(6) (Verdict Impeachment) adopts the procedure outlined in Schwartz v. Minneapolis Suburban Bus Company, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960).

Acceptance of a partial verdict under Rule 26.03, subd. 20(7) (Partial Verdicts) may bar further prosecution of any counts over which the jury has deadlocked. See Minn. Stat. § 609.035, subd. 1.

otherwise ordered by the court. ~~*(See Rule 26.02, subd. 4(3)(c)8.)*~~

*Rule 26.02, subd. 4(3)(*b~~a~~*)* ~~*(Uniform Rule)*~~ *is the* ~~*uniform*~~ *rule* ~~*which is*~~ *to be followed unless the court orders otherwise and substantially adopts the method used in civil cases, so that in a criminal case 20 members of the jury panel are first drawn for a 12-person jury.* ~~*(*~~*See Minn. Stat. §*~~*§ 546.09,*~~ *546.10* ~~*(1971)*~~*; Minn. R. Civ. P. 48. Rule 27, PT. I, Code of Rules for the District Courts.)*~~ *After each party has exercised challenges for cause, commencing with the defendant, they exercise their peremptory challenges alternately, commencing with the defendant. If all peremptory challenges are not exercised, the jury* ~~*shall*~~ *must be selected from the remaining prospective jurors in the order in which they were called.*

~~*Rule 26.02, subd. 4(3)(b) (By Order of Court) is the first alternative to Rule 26.02, subd. 4(3)(a). With a 12-person jury to be selected, 12 members of the jury panel are first drawn, and as a juror is excused for cause or peremptorily, a replacement is drawn so that there are always 12 persons in the jury box. The order of examination and challenge prescribed by the rule, first by defendant and then by the state, retains existing law. (Minn. Stat. § 631.39 (1971).)*~~

~~*Rule 26.02, subd. 4(3)(c) (By Order of Court) is the second alternative to Rule 26.02, subd. 4(3)(a) and provides that the prospective jurors shall be drawn one at a time. Otherwise this rule is substantially the same as Rule 26.02, subd. 4(3)(b). In cases of first degree murder this alternative shall be preferred unless the court in its discretion orders otherwise.*~~

~~*Rule 26.02, subd. 4(4) (Exclusion of the Public from Voir Dire) provides the procedure and standards for excluding the public from voir dire or restricting access to related orders or transcripts when prospective jurors are questioned on sensitive or embarrassing matters. The Minnesota Supreme Court Jury Task Force in its Final Report of December 20, 2001 in recommendation 20 proposed that the Rules of Criminal Procedure be amended to safeguard the privacy interests of prospective jurors during voir*~~

~~*dire when the interrogation focuses on highly sensitive or personal matters. Rule 26.02, subd. 4(4) does that, but subject to the dictates of Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501 (1984), which requires balancing a prospective juror's privacy interest against the defendant's right to a fair and public trial and the First Amendment right of the public to have access to court proceedings. Under that case only a compelling interest would justify closing voir dire to the public and any restrictions on access must be narrowly tailored to serve that interest. Closure of voir dire must be rare and should be ordered only when the interrogation touches on deeply personal matters that the prospective juror has legitimate reasons for keeping out of the public domain. Under the rule and in accord with Press Enterprise, the request to close voir dire must be initiated by the prospective juror. However, the court must advise the prospective jurors of the right to make that request when it appears that sensitive questions may be asked during voir dire. Any determination by the court to close any part of the voir dire must be supported by findings either in writing or orally on the record. The court may withhold names, restrict access to orders or transcripts, and excise transcripts as may be necessary to safeguard the overriding privacy interests involved.*~~

Rule 26.02, subd. 5(1) (Grounds of Challenge for Cause) ~~*with some changes of language, substantially adopts the grounds for challenge for cause under existing law (see Minn. Stat. §§ 631.28 – 631.31 (1971)), but abolishes the classifications of the grounds into general causes (§§ 631.28, 631.29), particular causes (§ 631.30), implied bias (§§ 631.30, 631.31), and actual bias (§§ 631.30, 631.32)*~~. *For the definition of a felony conviction* ~~*which*~~*that would disqualify a person from service on the jury, see Minn. Stat. § 609.13* ~~*(1971)*~~. *The term "related offense" in the rule is intended to be more comprehensive than the conduct or behavioral incident covered by Minn. Stat. § 609.035* ~~*(1971)*~~.

~~*Rule 26.02, subd. 5(2) (How and When Challenge for Cause is Exercised) providing that a challenge for cause may be oral, stating the grounds upon which it is based, continues substantially the similar provisions of Minn. Stat.*~~

~~§ 631.34 (1971). The requirement that a challenge for cause to an individual juror shall be made before the juror is sworn but for good cause may be made before all the jurors are sworn adopts substantially the provisions of Minn. Stat. § 631.26 (1971). As to when jeopardy attaches, see comment to Rule 25.02.~~

~~Rule 26.02, subd. 5(3) (By Whom Challenges for Cause are Tried) provides that if a party objects to a challenge for cause, it shall be tried by the court. The rule abolishes exceptions to and denials of the challenge (Minn. Stat. § 631.34 (1971)) by the triers of fact (Minn. Stat. § 631.34 (1971)) (Minn. Stat. § 631.35 (1971)).~~

~~Rule 26.02, subd. 6 (Peremptory Challenges) changes the number of peremptory challenges allowed by Minn. Stat. § 631.27 (1971) when the offense is punishable by life imprisonment from 20 for the defendant and 10 for the state to 15 and 9. The provision of § 631.27 giving the defendant 5 and the prosecution 3 peremptory challenges in the trial of other offenses is continued. The provision for additional peremptory challenges when there is more than one defendant comes from F.R.Crim.P. 24.~~

*Rule 26.02, subd. ~~6a~~7 (Objections to Peremptory Challenges) ~~is intended to~~ adopt~~s~~ and implement~~s~~ the equal protection prohibition against purposeful racial and gender discrimination in the exercise of peremptory challenges established in Batson v. Kentucky, 476 U.S. 79~~, 106 S.Ct. 1712~~ (1986) and subsequent cases, including J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127~~, 114 S.Ct. 1419~~ (1994) (extending the rule to gender-based discrimination). In applying this rule, the bench and bar should thoroughly familiarize themselves with the case law ~~which~~that has developed, particularly with respect to meanings of the terms "prima facie showing," "race-neutral explanation," "pretextual reasons," and "purposeful discrimination" used in the rule. ~~See Batson, supra; Purkett v. Elem, 514 U.S., 115 S.Ct. 1769 (1995); Ford v. Georgia, 498 U.S. 411, 111 S.Ct. 850 (1991); Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364 (1991); Hernandez v. New York, 500 U.S. 352, 111 S.Ct. 1859 (1991); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 111 S.Ct.~~

~~2077 (1991) Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348 (1991); State v. Moore, 438 N.W.2d 101 (Minn. 1989); State v. Everett, 472 N.W.2d 864 (Minn. 1991); State v. Bowers, 482 N.W.2d 774 (Minn. 1992); State v. Scott, 493 N.W.2d 546 (Minn. 1992); and State v. McRae, 494 N.W.2d 252 (Minn. 1992). Although the rule expressly applies only to racial and gender discrimination, counsel and the court should be aware of the possibility that the Batson protections and procedures could be extended by caselaw to other protected classes, especially where that class is subject to heightened or strict scrutiny such as for religion.~~ *See* *also* *State v. Davis. 504 N.W.2d 767 (Minn. 1993)* *(declining tp extend the rule to religion),* *cert.* ~~*Denied*~~*denied sub. nom Davis v. Minnesota, 511 U.S. 1115*~~*, 114 S.Ct. 2120*~~ *(1994)* ~~*(extending the rule to religion)*~~*.* ~~*In the second step of the process under Rule 26.02, subd. 6a(3)(b), the responding party need only "articulate" a race or gender neutral explanation for exercising the peremptory challenge. If that is done, the court proceeds to the third step in the process. During the second step of the process the court is not to weigh or judge the explanation presented so long as it articulates a race or gender neutral basis for the challenge. Purkett v. Elem, 514 U.S., 115 S.Ct. 1769 (1995).*~~

~~*Rule 26.02, subd. 7 (Order of Challenges) prescribes the order in which challenges shall be made: first, to the panel; second, to an individual juror for cause; and third, peremptorily to an individual juror. It supersedes the requirement of Minn. Stat. § 631.39 (1971) that challenges for cause be made for (1) general disqualification, (2) implied bias, and (3) actual bias, in that order.*~~

~~*Rule 26.02, subd. 8 (Alternate Jurors) is based on F.R.Crim.P. 24(c) and ABA Standards, Trial by Jury, 2.7 (Approved Draft, 1968) and displaces Minn. Stat. § 546.095 (1971). It places no limitations on the number of alternate jurors and permits no additional peremptory challenges and differs in those respects from the federal rule and § 546.095.*~~

~~*Rule 26.03, subd. 1(1) (Presence Required) is taken from F.R.Crim.P. 43. See also Rules 14.02 and 27.03, subd. 2.*~~ *The interpreter requirement* ~~*is based upon*~~*in Rule 26.03, subd. 1(1) derives from*

~~*Rule 5.01*~~*Rule 8 of the General Rules of Practice for the District Courts* and *Minn. Stat. §§ ~~611.31-611.24 (1992)~~611.30-.34*.

~~*Rule 26.03, subd. 1(2) (Continued Presence Not Required) is based upon Proposed F.R.Crim.P. 43(b) (1971) 52 F.R.D. 472, Allen v. Illinois, 397 U.S. 337, 90 S.Ct. 1057 (1970) and Minn. Stat. § 631.015 (1971). If a defendant fails to be present at the trial, the court may proceed with the trial unless it appears that the defendant's absence was involuntary. The defendant may move for a new trial on the ground any absence was involuntary.*~~

~~*Rule 26.03, subd. 1(3) (Presence Not Required), permitting the defendant's absence from proceedings in the case of misdemeanors, is drawn from proposed F.R.Crim.P. 43(c) (1971) 52 F.R.D. 472 (see also Rules 14.02 and 27.03, subd. 2.) In addition, in the case of felonies and gross misdemeanors, it permits the court to excuse defendant's presence from any proceeding except arraignment, plea, trial, and imposition of sentence.*~~

~~*Rule 26.03, subd. 1(3) 4 is based upon the recommendation of the Minnesota Supreme Court Criminal Courts Study Commission. The purpose of the rule is to facilitate the hearings in non-dispositive, uncontested, and ministerial hearings whenever counsel, court, and defendant agree.*~~

Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses)~~ is taken from ABA Standards, Trial by Jury, 4.1(a), (b), (c) (Approved Draft, 1968)~~. A defendant's refusal~~Refusal of a defendant to put on or~~ wear ~~non-distinctive~~non-jail attire ~~of a prisoner that has been made available shall constitute a waiver of~~ waives this provision and ~~shall~~is not ~~be~~ grounds for delaying the trial. A list of factors relevant to the decision to employ restraints is found in State v. Shoen, 578 N.W.2d 708, 713 (Minn. 1998).

~~*Rule 26.03, subd. 3 (Use of Courtroom) comes from ABA Standards, Fair Trial and Free Press 3.5(a) (Approved Draft, 1968).*~~

~~*Rule 26.03, subd. 4 (Preliminary Instructions)*~~

~~is adapted from ABA Standards, Trial by Jury 4.6(a) (Approved Draft, 1968) and Minn.R.Civ.P. 39.03.~~

~~Rule 26.03, subd. 5(1) (Sequestration of Jury in Discretion of Court) permits sequestration of the jury in the discretion of the court from the time the jury is sworn until deliberation begins.~~

~~Rule 26.03, subd. 5(2) (Sequestration on Motion) directing sequestration on motion of either party when prejudicial publicity may come to the attention of the jurors, comes from ABA Standards, Fair Trial and Free Press 3.5(b) (Approved Draft, 1968).~~

Rule 26.03, subd. 5(3) requires the consent of the defendant and prosecutor when ordering jurors to separate overnight during deliberation. In State v. Green, 719 N.W.2d 664, 672-73 (Minn. 2006), the Minnesota Supreme Court concluded that a district court did not commit error in releasing jurors for the night when no hotel accommodations could be found within a reasonable distance of the courthouse despite an exhaustive effort, neither party could propose a means of accomplishing sequestration, and the trial court instructed jurors to have no discussions about the case and to not read newspapers, watch television, or listen to the radio.

Rule 26.03, subd. 6 (Exclusion of Public From Hearings or Arguments Outside the Presence of the Jury) ~~is based on~~reflects Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550, 559-60 (Minn. 1983), which established similar procedures for excluding the public from pretrial hearings. See the comment to Rule 25.01 concerning those procedures. ~~When the record of proceeding from which the public is excluded is made available, the court may order that names be deleted or substitutions therefor made for the protection of innocent persons. This rule for exclusion of the public is not intended to interfere with the power of the court, in connection with any hearing held outside the presence of the jury, to caution those present that dissemination of specified information by any means of public~~

~~*communication, prior to the rendering of the verdict, may jeopardize right to a fair trial by an impartial jury. (See ABA Standards, Fair Trial and Free Press 3.5(d) (Approved Draft, 1968).) An agreement by the news media not to publicize matters heard until after completion of the trial could afford the basis for a determination by the court that there is no substantial likelihood of interfering with an overriding interest, including the right to a fair trial, by permitting the news media or the public to be present. Re provision for appellate review, see comment to Rule 25.01.*~~

~~*Rule 26.03, subd. 7 (Cautioning Parties, Witnesses, Jurors and Judicial Employees; Insulating Witnesses) comes from ABA Standards, Fair Trial and Free Press, 3.5(c) (Approved Draft, 1968).*~~

~~*Rule 26.03, subd. 8 (Admonitions to Jurors) adopts the substance of ABA Standards for Criminal Justice 8-3.6(a) (1985). In any case that appears likely to be of significant public interest, an admonition in substantially the following form, suggested by ABA Standards for Criminal Justice 8-3.6(c) (1985), may be given before the end of the first day if the jury is not sequestered:*~~

~~*"During the time you serve on this jury, there may appear in the newspapers or on radio or television reports concerning this case, and you may be tempted to read, listen to, or watch them. Please do not do so. Due process of law requires that the evidence to be considered by you in reaching your verdict meet certain standards; for example, witnesses may testify about events personally seen or heard but not about matters told to them by others. Also, witnesses must be sworn to tell the truth and must be subject to cross-examination. News reports about the case are not subject to these standards, and if you read, listen to, or watch these reports, you may be exposed to information which unduly favors one side and to which the other side is unable to respond. In fairness to both sides, therefore, it is essential that you comply with this instruction."*~~

~~*If the process of selecting a jury is a lengthy one, such an admonition may also be given to each juror as selected. At the end of each subsequent day of the trial, and at other recess periods if the*~~

~~*court deems necessary, an admonition in substantially the following form suggested by Standard 3.5(c) may be given:*~~

~~*"For the reasons stated earlier in the trial, I must remind you not to read, listen to, or watch any news reports concerning this case while you are serving on this jury."*~~

~~*Rule 26.03, subd. 9 (Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial) adopts ABA Standards, Fair Trial and Free Press, 3.5(f) (Approved Draft, 1968).*~~

~~*Rule 26.03, subd. 10 (View by Jury) adapted from N.Y.C.P.L. 270.50, replaces Minn. Stat. § 546.12 (1971).*~~

Rule 26.03, subd. ~~11~~12 (Order of Jury Trial) substantially continues the order of trial under existing practice. ~~(~~See Minn. Stat. § 546.11 ~~(1971).)~~ The order of closing argument, under sections "h," ~~,~~ "i," ~~,~~ "j," ~~,~~and "k" ~~, and "l"~~ of this rule reflects a change. The prosecution argues first, then the defense. The prosecution is then automatically entitled to rebuttal argument. However, this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument. Allowance of the rebuttal argument to the prosecution should result in a more efficient and less confusing presentation to the jury. The prosecution will ~~only~~ need to address only those defenses actually raised by the defendant rather than guessing, perhaps wrongly, about those defenses. In the event that the prosecution engages in improper rebuttal, paragraph "k" of the rule provides, upon motion, for a limited right of rebuttal to the defendant to address misstatements of law or fact and any inflammatory or prejudicial statements. The court has the inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in earlier arguments. It is the responsibility of the court to ensure that final argument to the jury is kept within proper bounds. ABA Standards for Criminal Justice~~,~~: ~~The~~ Prosecution Function ~~3-5.8~~ and ~~The~~ Defense Function, standards 3-5.8 & ~~4-7.8~~4-7.7 (~~1985~~3d

ed. 1993). If the argument is sufficiently improper, the trial judge should intervene, even without objection from opposing counsel. See State v. Salitros, 499 N.W.2d 815, 817 (Minn. 1993); State v. White, 295 Minn. 217, 223, 203 N.W.2d 852, 857 (1973).

~~Rule 26.03, subd. 12 (Note Taking) is adapted from Minn. Stat. § 631.10 (1971) and ABA Standards, Trial by Jury 4.2 (Approved Draft, 1968).~~

~~Rule 26.03, subd. 13 (Substitution of Judge) supersedes Minn. Stat. § 542.16 (1988) concerning notice to remove a judge in criminal proceedings. Parts (1) and (2) of the rule are taken from F.R.Crim.P. 25(a)(b) and ABA Standards, Trial by Jury 4.3 (Approved Draft, 1968) and take the place of Minn. Stat. § 484.29 (1971). Part (3) of the rule is based on Unif.R.Crim.P. 741(c) (1987). Unlike Minn.R.Civ.P. 63.02, the criminal rule defers to the Code of Judicial Conduct as to the grounds for disqualification and provides expressly that the judge sought to be removed may not hear and determine the issue. See Rule 3C of the Code of Judicial Conduct as to the grounds for disqualification. Part (4) of the rule is based on Minn.R.Civ.P. 63.03 except that the time limit specified for the notice differs from that provided by the civil rule and Minn. Stat. § 542.16(1988). The rule follows existing law and permits either the defendant or the prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. State v. Kraska, 294 Minn. 540, 201 N.W.2d 742 (1972). Only one such removal as a matter of right is permitted to a party. Any other removals must be for cause. A request to remove a judge for cause may be made either before or after exercising the right to remove a judge without showing cause. A judge who has previously presided at the trial, the Omnibus Hearing, or other evidentiary hearing in the case, of which a party had notice, may not later be removed from the case by that party without a showing of cause. However

Under Rule 26.03, subd. 14, a party is not foreclosed from later serving and filing a notice to remove a judge who simply presided at an appearance under Rule 5 or Rule 8 in the case. ~~Part (5) of the rule concerning recusal is based on~~

~~*Unif.R.Crim.P. 741(b) (1987). Under*~~ *Also under that rule, a judge should disqualify himself or herself "whenever the judge has any doubt as to his or her ability to preside impartially* ~~*in a criminal case*~~ *or whenever* ~~*the judge believes*~~ *his or her impartiality* ~~*can*~~ *reasonably might be questioned." ABA Standards for Criminal Justice: Special Functions of the Trial Judge, standard* ~~*6-1.7*~~*6-1.9 (*~~*1985*~~*3d ed. 2000).* ~~*Part (6) of the rule is based in part on Minn.R.Civ.P. 63.03 and 63.04 and Minn. Stat. § 542.16 (1988).*~~

~~*Rule 26.03, subd. 14(1) (Exceptions Abolished) is taken from Minn.R.Civ.P. 46 and supersedes Minn. Stat. § 547.03 (1971).*~~

~~*Rule 26.03, subd. 14(2) (Bills of Exception and Settled Cases Abolished) abolishes the bill of exceptions and settled case provided by Minn. Stat.§§ 547.02-06, 632.05 (1971) and adopts Minn.R.Civ.P. 59.02 and Minn.R.Civ.App.P. 110.01 providing for the record on a hearing upon a motion for new trial and on appeal. See also F.R.Crim.P. 26.*~~

Rule 26.03, subd. ~~*15*~~*16 (Evidence) leaves to the Minnesota Rules of Evidence the issues of the admissibility of evidence and the competency of witnesses except as otherwise provided in these rules. As to the use of a deposition at a criminal trial, Rule 21.06 controls rather than the Minnesota Rules of Evidence if there is any conflict between them. See Rule 802 and the comments to Rule 804 in the Minnesota Rules of Evidence. The prohibition in Rule 26.03, subd.* ~~*15*~~*16 against jurors submitting questions to witnesses is taken from State v. Costello, 646 N.W.2d 204, 214 (Minn. 2002).*

Rule 26.03, subd. ~~*15*~~*16 provides that any party offering a videotape or audiotape exhibit may also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.*

The provision~~*s*~~ *in Rule 26.03, subd.* ~~*16*~~*17*

(Interpreters) ~~concerning the appointment of and compensation for interpreters comes from F.R.Crim.P. 28(b). The provision in the rule~~ allowing qualified interpreters for any juror with a sensory disability to be present in the jury room during deliberations and voting was added to the rule to conform with Minn. Stat. § 593.32 and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. § 12101 et seq. Caselaw holding that the presence of an alternate juror during deliberations is considered to be presumptively prejudicial~~, -- e.g., State v. Crandall, 452 N.W.2d 708, 711 (Minn. App. 1990) – would not apply to such qualified interpreters present during deliberations. As to an interpreter's duties of confidentiality and to refrain from public comment, see respectively Canons 5 and 6 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

Rule 26.03, subd. ~~17~~18 (Motion for Judgment of Acquittal or ~~Insufficiency of~~Insufficient Evidence ~~to Support~~for an Aggravated Sentence)~~,. abolishing motions for directed verdict, and providing for motions for judgment of acquittal is taken from F.R.Crim.P. 29(a)(b)(c) and ABA Standards, Trial by Jury, 4.5(a)(b)(c) (Approved Draft, 1968). Such a motion by the defendant, if not granted, should not be deemed to withdraw the case from the jury or to bar the defendant from offering evidence. (See F.R.Crim.P. 29(a), ABA Standards, Trial by Jury, 4.5(a) (Approved Draft, 1968).)~~ A defendant is also entitled to a jury determination of any facts beyond the elements of the offense or conviction history that might be used to aggravate the sentence. Blakely v. Washington, 542 U.S. 296, 301~~ 124 S.Ct. 2531~~ (2004); State v. Shattuck, 704 N.W.2d 131, 135 (Minn. 2005). If such a trial is held, the rule also provides that the defendant may challenge the sufficiency of the evidence presented.

~~Rule 26.03, subd. 18(1) (Requests for Instructions) follows Minn.R.Civ.P. 51. See also F.R.Crim.P. 30 and ABA Standards, Trial by Jury 4.6(b) (Approved Draft, 1968).~~

~~*Rule 26.03, subd. 18(2) (Proposed Instructions) substantially adopts similar provisions in Minn. Stat. § 546.14 (1971).*~~

~~*Rule 26.03, subd. 18(3) (Objections to Instructions) is adapted from F.R.Crim.P. 30 and ABA Standards, Trial by Jury 4.6(c)(c) (Approved Draft, 1968). The last sentence relating to errors in fundamental law comes from Minn.R.Civ.P. 51.*~~

~~*Rule 26.03, subd. 18(4) (Giving of Instructions) comes from Minn.R.Civ.P. 51 except that the provisions permitting the giving of instructions before closing arguments and the jury to take written instructions to the jury room are new.*~~

~~*Rule 26.03, subd. 18(5) (Contents of Instructions) provides that the court shall instruct the jury on the law and may summarize the claims of the parties, but does not permit comment on the evidence or on the credibility of the witnesses. Compare Minn. Stat. § 631.08 (1971) which provides that the judge may "present the facts of the case."*~~

Rule 26.03, subd. ~~18~~19(~~7~~6) (Verdict Forms) requires that where aggravated sentence issues are presented to a jury, the court shall submit the issues to the jury by special interrogatory. For a sample form for that purpose see CRIMJIG 8.01 of the Minnesota Criminal Jury Instruction Guide. When that is done, Rule 26.03, subd. ~~19~~20(5) permits any of the parties to request that the jury be polled as to their answers.

~~*Rule 26.03, subd. 19 (Jury Deliberations and Verdict.)*~~

~~*Rule 26.03, subd. 19(1) (Materials to Jury Room) adopts the substance of Minn. Stat. § 631.10. [See also ABA Standards, Trial by Jury, 5.1(a) (Approved Draft, 1968).] It also permits the jury to take to the jury room a copy of the instructions, in the discretion of the court. For the notes of the jury see Rule 26.03, subd. 12.*~~

~~*Rule 26.03, subd. 19(2) (Jury Requests to Review Evidence) comes from ABA Standards, Trial by Jury, 5.2(a)(b) (Approved Draft, 1968) and takes the place of a similar provision of Minn. Stat. § 631.11 (1971).*~~

~~*Rule 26.03, subd. 19(3) (Additional Instructions After Jury Retires) is based on ABA*~~

~~*Standards, Trial by Jury, 5.3(a)(b)(c) and takes the place of a similar provision of Minn. Stat. § 631.11 (1971).*~~ *Rule 26.03, subd. ~~19~~20(4) (Deadlocked Jury~~.~~).* ~~——~~*The kind of instruction~~s~~ that may be given to a deadlocked jury is left to judicial decision~~ or to formulation of a pattern instruction~~. ~~In State v. Martin, 297 Minn. 359, 211 N.W.2d 765 (1973), the Minnesota Supreme Court disapproved an Allen instruction (Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896)) and adopted ABA Standards, Trial by Jury, 5.4 (Approved Draft, 1968).~~ In State v Buggs, 581 N.W.2d 329, 338 (Minn. 1998), the Supreme Court suggested the risk of error in jury instructions can be significantly reduced if trial court uses CRIMJIG 3.04 when the jury asks for further instruction.* ~~*Rule 26.03, subd. 19(5) (Polling the Jury) is drawn from ABA Standards, Trial by Jury, 5.5 (Approved Draft, 1968) and Minn. Stat. § 631.16 (1971).*~~ *Rule 26.03, subd. ~~19~~20(6) (Verdict Impeachment~~ of Verdict~~) adopts the procedure outlined in Schwartz v. Minneapolis Suburban Bus Company~~.~~, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960).* *Acceptance of a partial verdict under Rule 26.03, subd. ~~19~~20(7) (Partial Verdicts) ~~is taken from Unif.R.Crim.P. 535(e) (1987) and from State v. Olkon, 299 N.W.2d 89 (Minn.1980) which authorized the court to accept a partial verdict. Under the rule a partial verdict of either guilty or not guilty may be accepted by the court.~~may bar further prosecution of any counts over which the jury has deadlocked. See Minn. Stat. § 609.035, subd. 1.*	

Original Language Showing Markup	Proposed Revised Language
Rule 27. Sentence and Judgment	**Rule 27. Sentence and Judgment**
Rule 27.01 Conditions of Release	**Rule 27.01 Conditions of Release**
~~When a defendant has been convicted and is awaiting sentence~~After conviction but before sentencing, the court may continue or alter the ~~conditions for~~terms of ~~defendant's~~ release, or ~~may order confinement of the defendant, taking into account the conditions of release and~~the court may confine the defendant. ~~the~~ The factors ~~determining the conditions of release as provided by~~in Rule 6.02, subds. 1 and ~~subd.~~ 2 ~~and whether there is reason to believe that the defendant will flee or pose a danger to any person or to the community. The burden of establishing that~~apply, but the defendant bears the burden of showing the defendant will not flee ~~or will~~and is not ~~be~~ a danger to ~~any other person or to the community rests with the defendant~~others.	After conviction but before sentencing, the court may continue or alter the terms of release, or the court may confine the defendant. The factors in Rule 6.02, subds. 1 and 2 apply, but the defendant bears the burden of showing the defendant will not flee and is not a danger to others.
Rule 27.02 Presentence Investigation in Misdemeanor Cases	**Rule 27.02 Presentence Investigation in Misdemeanor Cases**
~~In misdemeanor cases, the report of the presentence investigation may be oral if so directed by the court~~An oral presentence report may be given in misdemeanor cases. If ~~the presentence~~an oral report is given ~~orally, the defendant or defense counsel shall~~, the parties must be permitted to hear ~~the report~~it.	An oral presentence report may be given in misdemeanor cases. If an oral report is given, the parties must be permitted to hear it.
Rule 27.03 Sentencing Proceedings	**Rule 27.03 Sentencing Proceedings**
Subd. 1. Hearings. ~~Hearings upon the presentence report and upon the sentence to be imposed upon the defendant shall~~Sentencing hearings must be held as provided by law~~.~~:	Subd. 1. Hearings. Sentencing hearings must be held as provided by law:
(A) Misdemeanor and Gross Misdemeanor Hearings. Before the sentencing proceeding~~,~~ in	(A) Misdemeanor and Gross Misdemeanor Hearings. Before the

a misdemeanor or gross misdemeanor case~~,~~: (1) Either party is permitted to contest any part of an oral presentence investigation. The court may continue the hearing to give the parties this opportunity. (2) ~~each~~ A party ~~shall~~ must notify the opposing party and the court ~~of any part of a written presentence report which~~if the party intends to ~~controvert by the production of~~present evidence to contest any part of the presentence investigation. ~~Both the prosecutor and the defendant or defense counsel shall have an opportunity to controvert any part of an oral presentence report and for such purpose the court may continue the sentencing.~~ ~~The procedure for such hearings in felony cases shall be as follows~~(B) Felony Sentencings~~:~~ (~~A~~1) ~~At the time of, or within three~~Within 3 days after a plea~~,~~ or finding or verdict of guilty ~~of~~in a felony case, the court may: (a) order a presentence investigation ~~and shall order that a sentencing worksheet be completed. As part of any presentence investigation and report, the court may order a mental or physical examination of the defendant. The court shall also then:~~ and ~~(1) Set~~ set a date for ~~the~~its return ~~of the report of the presentence investigation.~~; (b) order a mental or physical examination of the defendant; (2) Within the same 3 days, the court must: (a) order completion of a sentencing guidelines worksheet; (~~2~~b) ~~Set~~set a date~~, time and place~~ for ~~the~~ sentencing~~:~~; (~~3~~c) ~~Order~~order the defendant to ~~return at such date, time and place~~appear on the sentencing date. (~~4~~3) If the ~~facts ascertained at the time of a plea or through trial cause the judge~~court intends to consider a mitigated departure from	sentencing proceeding in a misdemeanor or gross misdemeanor case: (1) Either party is permitted to contest any part of an oral presentence investigation. The court may continue the hearing to give the parties this opportunity. (2) A party must notify the opposing party and the court if the party intends to present evidence to contest any part of the presentence investigation. (B) Felony Sentencings (1) Within 3 days of a plea or finding or verdict of guilty in a felony case, the court may: (a) order a presentence investigation and set a date for its return; (b) order a mental or physical examination of the defendant; (2) Within the same 3 days, the court must: (a) order completion of a sentencing guidelines worksheet; (b) set a date for sentencing; (c) order the defendant to appear on the sentencing date. (3) If the court intends to consider a mitigated departure from the sentencing guidelines, the court must advise the parties.

the sentencing guidelines ~~appropriate~~, the court ~~shall advise counsel of such consideration~~must advise the parties. This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.	This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.
(~~B~~4) The presentence investigation report, if ordered, ~~shall include the information required by~~must conform to Minn. Stat. § 609.115, subd. 1, ~~a completed~~and include a sentencing guidelines worksheet and any other ~~supplemental worksheets and such other~~ information ~~as~~ the court ~~may direct~~ordered included. The report ~~shall~~ must be submitted ~~to the court~~ in triplicate.	(4) The presentence investigation report, if ordered, must conform to Minn. Stat. § 609.115, subd. 1, and include a sentencing guidelines worksheet and any other information the court ordered included. The report must be submitted in triplicate.
(~~C~~5) The court ~~shall cause a copy of the sentencing~~must forward the guidelines worksheet and the nonconfidential portion of the presentence investigation ~~report, if any, to be forwarded to the prosecutor and to the defendant or defense counsel subject to the limitations of~~to the parties except as limited by Minn. Stat. § 609.115, subd. 4. ~~If the presentence investigation report contains a~~ The confidential information section ~~that portion~~of the presentence investigation need not be forwarded, ~~to counsel or to defendant but counsel should be advised that such information~~but counsel for the parties must be told it is available for inspection ~~at some designated place~~. ~~If departure from the sentencing guidelines appears appropriate, and the court has not previously notified the parties or counsel for the parties that the court is considering departure, the court shall forward notification of such consideration at the time the sentencing worksheet and any presentence investigation report is forwarded.~~	(5) The court must forward the guidelines worksheet and the nonconfidential portion of the presentence investigation to the parties except as limited by Minn. Stat. § 609.115, subd. 4. The confidential information section of the presentence investigation need not be forwarded, but counsel for the parties must be told it is available for inspection.
(~~D~~6) ~~Upon receipt of the sentencing worksheet and any presentence investigation report, any party desiring a sentencing hearing shall, not later than eight days before the date~~	(6) Any party may move for a sentencing hearing after receipt of the presentence investigation and guidelines worksheet.

~~for the sentencing, file with the court and serve on opposing counsel a motion for such hearing, except that when the sentencing worksheet and any presentence investigation report is received within eight days prior to the sentencing date, the motion for a sentencing hearing shall be made within a reasonable time after receipt of the worksheet and any report. If necessary, the court shall continue the sentencing.~~Any party may move for a sentencing hearing after receipt of the presentence investigation and guidelines worksheet,	
(a) The motion must be served on the opposing party and filed with the court. (b) The motion must be served and filed no later than 8 days before the hearing, unless the presentence investigation is received less than 8 days before the sentencing date, then the motion must be served and filed within a reasonable time. (c) The court may continue a sentencing hearing to accommodate a sentencing motion. (d) The motion ~~for a sentencing hearing shall specifically set forth the~~must state the reasons for the ~~motion~~hearing, including ~~a designation of any~~the portion of the presentence investigation ~~report or sentencing guidelines~~or worksheet being challenged, and ~~the grounds for the challenge supported by~~include any affidavits or other ~~documentation~~documents supporting the motion. (~~E~~e) Opposing counsel must ~~shall file and serve any~~serve and file a reply ~~not~~ no later than ~~three~~3 days before the sentencing ~~date~~hearing.	(a) The motion must be served on the opposing party and filed with the court. (b) The motion must be served and filed no later than 8 days before the hearing, unless the presentence investigation is received less than 8 days before the sentencing date, then the motion must be served and filed within a reasonable time. (c) The court may continue a sentencing hearing to accommodate a sentencing motion. (d) The motion must state the reasons for the hearing, including the portion of the presentence investigation or worksheet being challenged, and include any affidavits or other documents supporting the motion. (e) Opposing counsel must serve and file a reply no later than 3 days before the sentencing hearing.
(~~F~~7) At the sentencing hearing~~,~~: (a) The contested sentencing motions must~~issues raised in the sentencing hearing motion shall~~ be heard. (b) ~~In addition, any remaining factual or legal issues relating to the sentence shall be succinctly stated on the record by counsel~~The parties may raise other sentencing issues. (c) The court ~~shall also permit~~must allow	(7) At the sentencing hearing: (a) The contested sentencing motions must be heard. (b) The parties may raise other sentencing issues. (c) The court must allow the record to

the record to be supplemented ~~by such~~with relevant testimony ~~as it deems relevant and material to the issues~~.	be supplemented with relevant testimony.
(d)~~At the conclusion of the sentencing hearing, the court may state into the record~~The court may make findings of fact~~,~~ and conclusions of law ~~and appropriate order on the issues submitted by the parties~~on the record or~~,~~ ~~Otherwise, the court shall issue written findings of fact, conclusions of law and appropriate order~~ if in writing, within ~~twenty~~20 days of the ~~conclusion of the sentencing~~ hearing.	(d) The court may make findings of fact and conclusions of law on the record or, if in writing, within 20 days of the hearing.
(e) If ~~it is determined upon hearing that the sentencing~~the court determines the guidelines worksheet or supplement ~~submitted as a part of any presentence investigation report contains an error or errors~~is wrong, the court ~~shall cause~~may order a corrected worksheet ~~to be prepared, filed and~~ submitted to the sentencing guidelines commission.	(e) If the court determines the guidelines worksheet or supplement is wrong, the court may order a corrected worksheet submitted to the sentencing guidelines commission.
(~~G~~8) The court may impose sentence immediately following the conclusion of the sentencing hearing.	(8) The court may impose sentence immediately following the conclusion of the sentencing hearing.
Subd. 2. Defendant's Presence ~~at Hearing and Sentencing~~.	Subd. 2. Defendant's Presence.
(A) ~~Defendant~~ The defendant must be ~~personally~~ present at the sentencing hearing and ~~at the time sentence is pronounced except when~~sentencing, unless excused ~~pursuant to~~under Rule 26.03, subd. 1(3).	(A) The defendant must be present at the sentencing hearing and sentencing, unless excused under Rule 26.03, subd. 1(3).
(B) If the defendant is ~~handicapped~~disabled in communication, a qualified interpreter ~~for the defendant~~ must ~~also~~ be present.	(B) If the defendant is disabled in communication, a qualified interpreter must be present.
(C) ~~Sentence may be pronounced against a~~A corporation may be sentenced in the absence of counsel if counsel fails to appear~~, on the date of sentence after reasonable notice thereof~~after notice, at sentencing.	(C) A corporation may be sentenced in the absence of counsel if counsel fails to appear, after notice, at sentencing.
Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence~~,~~ the court ~~shall give the~~must allow statements from:	Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court must allow statements from:

(A) the prosecutor, ~~the~~ victim, and defense counsel ~~an opportunity to make a statement with respect to any matter relevant to the question of sentence including a recommendation as to~~concerning any sentencing issues and a recommended sentence~~.~~; (B) persons on behalf of the defendant; (C) ~~The court shall also address the defendant personally and ask if the defendant wishes to make a statement in the defendant's own behalf and to present any information before sentence including, in the discretion of the court, oral statements from other persons on behalf or the defendant.~~the defendant, personally. The court ~~shall~~ must not accept any off-the-record ~~communication relative to~~communications relating to sentencing ~~that is not on the record without disclosing the~~unless the contents are disclosed to the ~~defense and to the prosecution~~parties. Subd. 4. ~~Imposition of Sentence~~Sentencing. When ~~sentence is imposed~~pronouncing sentence the court must: (A) ~~Shall s~~State precisely the ~~precise~~ terms of the sentence. (B) ~~Shall assure that the record accurately reflects all time~~State the number of days spent in custody in connection with the offense or behavioral incident ~~for which sentence is imposed~~being sentenced. ~~Such time shall be automatically~~That credit must be deducted from the sentence and ~~the~~ term of imprisonment ~~including~~ and must include time spent in custody ~~as a condition of probation~~ from a prior stay of imposition or execution of sentence. (C) ~~For felony cases if the sentence imposed departs~~If the court imposes a departure from the sentencing guidelines ~~applicable to the case,~~ the court ~~shall state, on the record,~~must make findings of fact ~~as to the reasons for~~supporting the departure. ~~In addition, the reasons for departure shall either~~The grounds for departure	(A) the prosecutor, victim, and defense counsel concerning any sentencing issues and a recommended sentence; (B) persons on behalf of the defendant; (C) the defendant, personally. The court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to the parties. Subd. 4. Sentencing. When pronouncing sentence the court must: (A) State precisely the terms of the sentence. (B) State the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence. (C) If the court imposes a departure from the sentencing guidelines, the court must make findings of fact supporting the departure. The grounds for departure must be: (a) stated in the sentencing order; or (b) recorded in the departure report as provided by the sentencing guidelines commission and

must be: (a) stated in ~~a~~ the sentencing order; or (b) recorded in the departure report as provided by the sentencing guidelines commission and attached to the sentencing ~~form provided for in~~order required under subdivision ~~6~~7. The sentencing order ~~or sentencing form with~~and any attached departure report ~~shall~~must be filed with the commission within 15 days after ~~the date of~~ sentencing.	attached to the sentencing order required under subdivision 7. The sentencing order and any attached departure report must be filed with the commission within 15 days after sentencing.
(D) ~~Prior to imposition of a sentence in a felony case which deviates from the sentencing guidelines, the court shall allow either party to request a sentencing hearing if no sentencing hearing was held and the court did not give prior notice that the sentence imposed might depart from the sentencing guidelines~~If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.	(D) If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.
(E) If the court ~~elects to stay~~stays imposition or execution of sentence: (1) The court ~~shall~~ must state the ~~precise term during which imposition or execution will be stayed~~length of the stay.	(E) If the court stays imposition or execution of sentence: (1) The court must state the length of the stay.
(2) In felony cases, the court ~~shall advise~~must tell the defendant that noncustodial probation time ~~may~~ will not be credited against ~~the sentence in the event that probation is ultimately revoked and sentence executed~~a future prison term if the stay is revoked.	(2) In felony cases, the court must tell the defendant that noncustodial probation time will not be credited against a future prison term if the stay is revoked.
(3) If ~~noncriminal~~lawful conduct could ~~result in revocation, the trial court should advise~~violate the defendant's terms of probation, ~~so that~~the court must tell the defendant ~~can be reasonably able to tell~~ what ~~lawful acts are prohibited~~that conduct is.	(3) If lawful conduct could violate the defendant's terms of probation, the court must tell the defendant what that conduct is.
(4) A written copy of the ~~conditions~~ terms of probation ~~should~~must be given to the	(4) A written copy of the terms of probation must be given to the defendant at

defendant at ~~the time of~~ sentencing or as soon ~~thereafter~~as possible afterwards.	sentencing or as soon as possible afterwards.
(5) The court must inform the defendant ~~should be told~~ that if the defendant disagrees with the probation agent concerning the terms and conditions of probation, ~~in~~ the defendant may return to court for clarification~~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~~.	(5) The court must inform the defendant that if the defendant disagrees with the probation agent concerning the terms and conditions of probation, the defendant may return to court for clarification.
Subd. 5. ~~Notice of~~ Right ~~to~~ of Appeal. After ~~imposition of sentence or granting of probation~~sentencing, the court ~~shall inform~~must tell the defendant of the right to appeal ~~the judgment of conviction or sentence or both and the right of a person who is unable to pay the cost of appeal to apply for leave to~~both the conviction and sentence, and, if eligible, of the right to appeal at state expense by contacting the state public defender.	Subd. 5. Right of Appeal. After sentencing, the court must tell the defendant of the right to appeal both the conviction and sentence, and, if eligible, of the right to appeal at state expense by contacting the state public defender.
Subd. 6. Record. ~~(A)~~ A verbatim record ~~of the sentencing proceedings shall~~must be made of the sentencing proceedings. ~~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~~If either party requests a transcript, it must be prepared within 30 days of a written request. The party requesting the transcript must pay for it and must make satisfactory arrangements for payment.	Subd. 6. Record. A verbatim record must be made of the sentencing proceedings. If either party requests a transcript, it must be prepared within 30 days of a written request. The party requesting the transcript must pay for it and must make satisfactory arrangements for payment.
Subd. 7. Sentencing Order. ~~(B) Information from the sentencing proceeding~~The court must issue a sentencing order for any counts for which the offense level ~~prior to~~before sentencing was a felony or gross misdemeanor~~ shall also be recorded in a~~	Subd. 7. Sentencing Order. The court must issue a sentencing order for any counts for which the offense level before sentencing was a felony or gross misdemeanor. This order must contain:

~~sentencing form or order that, at a minimum, contains~~. This order must contain:	
(1) the defendant's name; (2) the case number; (3) for each count: ~~i.~~(a) if the defendant pled guilty ~~to~~ or was found guilty ~~of the offense~~: ~~ii~~i. the offense date; ~~iiii~~i. ~~a citation to the offense statute~~the statute violated; ~~iv~~iii. ~~the information specified~~the terms of the sentence as outlined in subdivision 4 ~~(precise terms of sentence including the amount of any fine, time spent in custody, whether the sentence is a departure and if so, the reasons therefor, and terms and conditions of probation)~~; ~~v~~iv. the level of sentence; ~~and~~ v. any restitution~~, if appropriate~~ ordered, and whether it ~~shall be~~is joint and several with ~~other persons; or~~others; ~~vi.~~(b) if the defendant did not plead guilty ~~to~~ or was not found guilty ~~of the offense~~, ~~that~~whether the defendant was acquitted or the count was dismissed; (4) ~~other financial obligations such as surcharges, law library fees, court costs, and~~ any fine, court costs, library fee, treatment evaluation ~~costs~~cost or other financial charge; and (5) the judge's signature ~~of the sentencing judge~~. The sentencing order ~~shall~~must be provided in place of the transcript required ~~in~~by ~~Minnesota Statutes sections~~Minn. Stat. §§ 243.49 and 631.41.	(1) the defendant's name; (2) the case number; (3) for each count: (a) if the defendant pled guilty or was found guilty: i. the offense date; ii. the statute violated; iii. the terms of the sentence as outlined in subdivision 4; iv. the level of sentence; v. any restitution ordered, and whether it is joint and several with others; (b) if the defendant did not plead guilty or was not found guilty, whether the defendant was acquitted or the count was dismissed; (4) any fine, court costs, library fee, treatment evaluation cost or other financial charge; and (5) the judge's signature. The sentencing order must be provided in place of the transcript required by Minn. Stat. §§ 243.49 and 631.41.
Subd. ~~7~~8. Judgment. The ~~clerk's~~ record of a judgment of conviction ~~shall~~ must contain the plea, ~~the~~ verdict ~~of findings, and the~~, adjudication of guilt, and sentence. If ~~the~~ a defendant is found not guilty or ~~for any other reason is entitled to be~~is otherwise discharged, judgment ~~shall~~ must be entered accordingly. ~~The~~ A sentence or stay of imposition of	Subd. 8. Judgment. The record of a judgment of conviction must contain the plea, verdict, adjudication of guilt, and sentence. If a defendant is found not guilty or is otherwise discharged, judgment must be entered accordingly. A sentence or stay of imposition of sentence is an adjudication of guilt.

sentence is an adjudication of guilt.	
~~Subd. 8. Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.~~	
Subd. 9. Correction or Reduction of Sentence. The court may at any time ~~may~~ correct a sentence not authorized by law. The court may ~~at any time~~ modify a sentence during ~~either~~ a stay of execution or imposition of sentence ~~or stay of execution of sentence except that~~if the court ~~may~~ does not increase the period of confinement.	Subd. 9. Correction or Reduction of Sentence. The court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement.
Subd. 10. Clerical Mistakes. Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.	Subd. 10. Clerical Mistakes. Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.
Rule 27.04 Probation Revocation	**Rule 27.04. Probation Revocation**
Subd. 1. ~~Commencement of Proceedings~~Initiation of Proceedings.	Subd. 1. Initiation of Proceedings.
(1) ~~Issuance of Revocation~~ Warrant or Summons.	(1) Warrant or Summons.
(a) ~~Proceedings for the revocation of probation shall be commenced by the issuance of a warrant or a summons by the court~~Probation revocation proceedings must be initiated by a summons or warrant based ~~up~~on a written report showing probable cause to believe ~~that the~~a probationer ~~has~~ violated ~~any conditions of~~ probation.	(a) Probation revocation proceedings must be initiated by a summons or warrant based on a written report showing probable cause to believe a probationer violated probation.
(b)~~The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based.~~ The court ~~shall~~ must issue a summons ~~instead of a warrant whenever it is satisfied that~~unless the court believes a warrant	(b) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another. If the probationer fails to appear on the summons, the court may issue a

is ~~unnecessary~~ necessary to secure the probationer's appearance ~~of the probationer~~ ~~, unless it reasonably appears that the arrest of the defendant is necessary to~~ or prevent harm to the ~~defendant~~ probationer or another. If the probationer fails to appear ~~in response to a~~ on the summons, the court may issue a warrant ~~may be issued~~.	warrant.
(2) Contents ~~of Warrant and Summons~~. ~~Both the warrant and summons shall contain~~The warrant or summons must include: (a) the name of the probationer~~,~~; (b) a description of the ~~probationary~~ sentence ~~sought to be revoked,~~and the probationary terms allegedly violated; (c) the judge's signature ~~of the issuing judge or judicial officer of the district court,~~; (d) ~~and shall be accompanied by the written report upon which it was based.~~a factual statement supporting probable cause to believe the probationer violated the terms of probation; (e) ~~The~~ the amount of ~~any~~ bail or other conditions of release ~~may be set by the issuing judge or judicial officer and endorsed~~the court may set on the warrant~~:~~. (f) ~~The warrant shall direct that the probationer be brought promptly before the court that issued the warrant if it is in session. If that court is not in session the warrant shall direct that the probationer be brought before a judge or judicial officer of that court, without unnecessary delay,~~ for a warrant, an order directing that the probationer be brought before the court promptly, and in any event not later than 36 hours after ~~the~~ arrest~~, exclusive of~~not including the day of arrest~~, or as soon thereafter as such judge or judicial officer is available~~. (g) ~~The summons shall summon the probationer to appear at a stated time and place to respond to the revocation charges~~for a summons, an order directing the probationer to appear at a specific date, time, and place.	(2) Contents. The warrant or summons must include: (a) the name of the probationer; (b) a description of the sentence and the probationary terms allegedly violated; (c) the judge's signature; (d) a factual statement supporting probable cause to believe the probationer violated the terms of probation; (e) the amount of bail or other conditions of release the court may set on the warrant; (f) for a warrant, an order directing that the probationer be brought before the court promptly, and in any event not later than 36 hours after arrest, not including the day of arrest. (g) for a summons, an order directing the probationer to appear at a specific date, time, and place.
(3) Execution~~, or~~ Service~~, of Warrant or Summons;~~ Certification of Warrant or	(3) Execution, Service, Certification of Warrant or Summons. Execution, service,

Summons. Execution, service, and certification of the warrant or summons ~~shall be~~are as provided in Rule 3.03.	and certification of the warrant or summons are as provided in Rule 3.03.
Subd. 2. First Appearance.	Subd. 2. First Appearance.
(1) ~~Advice to Probationer. A probationer who~~When the probationer initially appears ~~before the court pursuant to a~~on the warrant or summons ~~concerning an alleged probation violation, shall be advised of the nature of the violation charged.~~the court must:	(1) When the probationer initially appears on the warrant or summons the court must:
(a) ~~Prior to doing this, the judge, judicial officer, or other duly authorized personnel shall determine whether~~Appoint an interpreter if the probationer is ~~handicapped~~disabled in communication ~~and, if so, appoint a qualified interpreter to assist the probationer throughout the probation violation proceedings~~.	(a) Appoint an interpreter if the probationer is disabled in communication.
(b) ~~The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report~~Give the probationer a copy of the violation report, if not already provided.	(b) Give the probationer a copy of the violation report, if not already provided.
(c) ~~The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows~~Tell the probationer of the right to:	(c) Tell the probationer of the right to:
a. ~~That the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer upon request~~a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;	a. a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;
b. ~~That unless waived,~~ a revocation hearing ~~will be held~~ to determine whether ~~there is~~ clear and convincing evidence of a probation violation exists ~~that the probationer has violated any conditions of probation~~ and ~~that~~ whether probation should ~~therefore~~ be revoked;	b. a revocation hearing to determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked;
c. ~~That before the revocation hearing~~disclosure of all evidence ~~to be~~ used ~~against the probationer shall be disclosed to the probationer and the probationer shall be~~	c. disclosure of all evidence used to support revocation and of official records relevant to revocation;

provided access to allto support revocation and of official records pertinent to the proceedingsrelevant to revocation;	
d. That at the hearing both the prosecution and the probationer shall have the right to offer present evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the probationer may be denied confrontation by the court when good cause is shown that a substantial risk ofexcept the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists; would exist if it were allowed.	d. present evidence, subpoena witnesses, and call and cross-examine witnesses, except the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists;
e. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances evidence or other reasons why the violation, if proved, should not result in revocation;	e. present mitigating evidence or other reasons why the violation, if proved, should not result in revocation;
ef. That the probationer has the right of appeal from the determination of the court following the revocation hearingany decision to revoke probation.	f. appeal any decision to revoke probation.
(2) Appointment of Counsel. TheRule 5.02 governs the appointment of counsel for a probationer financially unable to afford counsel shall be governed by the standards and procedures set forth in Rule 5.02.	(2) Appointment of Counsel. Rule 5.02 governs the appointment of counsel for a probationer unable to afford counsel.
(3) Conditions of Release.	(3) Conditions of Release.
(a) The A probationer may be released pending appearance at the revocation hearing.	(a) A probationer may be released pending the revocation hearing.
(b) In deciding upon theThe conditions of release and whether to release the probationer, the court shall take into account the conditions of release andmust consider the factors determining the conditions of release as provided byfound in Rule 6.02, subd. 1 and subd. 2 and whether there is a reason to believe thatthe risk the probationer will flee or pose a danger to any person in or the community.	(b) The conditions of release must consider the factors found in Rule 6.02 and the risk the probationer will flee or pose a danger to any person or the community.
(c) The burden of establishing that the probationer bears the burden of establishing will not flee or will not be ano risk of flight or danger to any other person or the community rests with the probationer.	(c) The probationer bears the burden of establishing no risk of flight or danger to any person or the community.

(4) Time of Revocation ~~Hearing~~.	(4) Time of Revocation.
~~(a) The court shall set a date for the~~The revocation hearing ~~to~~ must be held within a reasonable time ~~before the court which granted probation~~.	(a) The revocation hearing must be held within a reasonable time.
~~(b)~~ If the probationer is in custody ~~as a result of the revocation proceedings~~because of the violation report, the ~~revocation~~ hearing ~~shall be held~~must be within ~~seven~~7 days.	(b) If the probationer is in custody because of the violation report, the hearing must be within 7 days.
~~(c)~~ If the ~~probationer has allegedly violated a condition of probation by commission of a~~violation report alleges a new crime, the ~~court may postpone the~~ revocation hearing may be postponed pending disposition of the criminal case ~~whether or not the probationer is in custody~~.	(c) If the violation report alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case.
(5) Record. A verbatim record ~~shall~~ must be made of ~~the proceedings at~~ the probationer's initial appearance ~~before the court under this rule~~.	(5) Record. A verbatim record must be made of the probationer's initial appearance.
Subd. 3. Revocation Hearing.	Subd. 3. Revocation Hearing.
(1) ~~Hearing Procedures~~Procedure. The revocation hearing ~~shall~~ must be ~~held in accordance with the provisions of~~conducted consistent with the rights outlined in subd. 2(1)~~(a), (b),~~ (c)~~, and (d)~~a-e ~~of this rule~~above.	(1) Procedure. The revocation hearing must be conducted consistent with the rights outlined in subd. 2(1)(c)a-e above.
(2) ~~Finding of No Violation of Conditions of Probation~~Findings.	(2) Findings.
~~(a)~~ No Violation. If the court finds ~~that a~~no violation of the conditions of probation ~~has not been established by clear and convincing evidence~~, the ~~revocation~~ proceedings ~~shall~~ must be dismissed~~,~~ and ~~the probationer's probation~~the probationer continued on probation under the ~~conditions theretofore~~terms previously ordered ~~by the court~~.	(a) No Violation. If the court finds no violation of the conditions of probation, the proceedings must be dismissed and the probationer continued on probation under the terms previously ordered.
~~(3~~b) ~~Finding of Violation of Conditions of Probation~~Violation Found. If the court finds ~~upon clear and convincing evidence that any conditions of probation have been violated,~~ or ~~if~~ the probationer admits ~~the~~ a probation violation, the court may ~~proceed as follows~~:	(b) Violation Found. If the court finds or the probationer admits a probation violation, the court may:

a.(i) Imposition of Sentence Stayed. If imposition of sentence was initially stayed, and probationer placed on probation, the court may again stay imposition of sentence or impose sentence and stay execution thereof, and in either event place the probationer on probation pursuant tocontinue an existing stay of imposition and order probation as provided in Minn. Stat. § 609.135;	(i) continue an existing stay of imposition and order probation as provided in Minn. Stat. § 609.135;
(ii) or impose sentence and order the execution thereof.but stay execution and order probation as provided in Minn. Stat. § 609.135;	(ii) impose sentence but stay execution and order probation as provided in Minn. Stat. § 609.135;
(iii) impose and execute a sentence;	(iii) impose and execute a sentence;
b.(iv) Execution of Sentence. If execution of sentence initially imposed was stayed and probationer placed on probation, the court may continue the stay and place the probationer on probation in accordance with the provisions ofcontinue an existing stay of execution and order probation as provided in Minn. Stat. § 609.135, or order execution of the sentence previously imposed.;	(iv) continue an existing stay of execution and order probation as provided in Minn. Stat. § 609.135;
(v) execute a sentence.	(v) execute a sentence.
(43) Record of Findings. A verbatim record shall must be made of the proceedings at theprobation revocation hearing. and in anyIf a contested revocation hearing is held, the court shall must make written findings of fact, on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determinationon in reaching a revocation decision and the basis for the court's decision.	(3) Record. A verbatim record must be made of the probation revocation hearing. If a contested revocation hearing is held, the court must make written findings of fact, including a summary of the evidence relied on in reaching a revocation decision and the basis for the court's decision.
(54) Appeal.	(4) Appeal.
(a) The probationer or the prosecutiondefendant or the prosecutor may appeal from the court'sthe revocation decision.	(a) The defendant or the prosecutor may appeal the revocation decision.
(b) Rule 28.05 governs theThe appeal shall proceed according to the procedure provided for appeal from a sentence by Rule 28.05, except that if an appellant files a notice of appeal and order for transcript within 90 days of the revocation hearing, the appellant's brief shall must be identified as a probation revocation appeal brief and shallmust be duefiled within 30 days of theafter delivery of	(b) Rule 28.05 governs the appeal, except that if an appellant files a notice of appeal within 90 days of the revocation hearing, the appellant's brief must be identified as a probation revocation brief and must be filed within 30 days after delivery of the transcript.

the transcript.	
(c) The Minnesota Rules of Civil Appellate Procedure govern preparation~~Preparation~~ of the transcript~~ shall beis governed by the Minnesota Rules of Civil Appellate Procedure~~. All other procedures are governed by Rule 28.05.~~	(c) The Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript.
Rule 27.05 Pretrial Diversion	**Rule 27.05. Pretrial Diversion**
Subd. 1. Agreements~~ Permitted~~.	Subd. 1. Agreements.
(1) ~~Generally. After due consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the defendant may agree that the~~A prosecution ~~will~~ may be suspended for a specified ~~period after which it will be~~time and then dismissed under subdivision 6~~7 of this rule on condition that the defendant not commit a felony, gross misdemeanor, misdemeanor or petty misdemeanor offense during the period.~~ if:	(1) A prosecution may be suspended for a specified time and then dismissed under subdivision 6 if:
(a) ~~The~~ the agreement ~~shall be~~is in writing and signed by the parties;~~.~~	(a) the agreement is in writing and signed by the parties;
(b) ~~It shall state that the defendant waives the right to a speedy trial. It may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the charge.~~	(b) the victim's views are considered;
~~(2) Additional Conditions. Subject to the court's approval after due consideration of~~ the victim's views are considered;	
(c) the court consents;	(c) the court consents;
(d) ~~and upon a showing of~~ the court finds a substantial likelihood ~~that a~~of conviction ~~could be obtained~~ and that the benefits ~~to society from~~of rehabilitation outweigh ~~any~~ the harm to society from suspending ~~criminal~~ prosecution~~,~~.	(d) the court finds a substantial likelihood of conviction and that the benefits of rehabilitation outweigh the harm to society from suspending prosecution.
(2) ~~the~~ The agreement~~ may specify one or more of the following additional conditions to be observed by the defendant during the period:~~	(2) The agreement must provide that the defendant not commit a new crime or petty misdemeanor and that the defendant waive the right to a speedy trial.

~~a. that~~ must provide that the defendant not ~~engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;~~commit a new crime or petty misdemeanor and that ~~b. that the defendant participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education~~the defendant waive the right to a speedy trial. In addition, the agreement may: ~~c.~~(a) ~~that the defendant make restitution in a specified manner for harm or loss caused by the crime charged; and~~include stipulations of fact or of the admissibility of specified testimony, other evidence, and depositions if the diversion agreement is terminated and the case is tried;	In addition, the agreement may: (a) include stipulations of fact or of the admissibility of specified testimony, other evidence, and depositions if the diversion agreement is terminated and the case is tried;
~~d.~~(b) ~~that the defendant perform specified community service~~provide for any term a court could impose as a condition of probation except the defendant may not be incarcerated as a condition of diversion.	(b) provide for any term a court could impose as a condition of probation except the defendant may not be incarcerated as a condition of diversion.
(3) Limitations~~ on Agreements~~. The agreement ~~may~~ cannot ~~specify a period longer or any condition other than could be imposed upon probation after conviction of the crime charged~~suspend prosecution longer than the period of probation the court could impose if the defendant were convicted. The agreement cannot include a condition the court could not impose as a condition of probation.	(3) Limitations. The agreement cannot suspend prosecution longer than the period of probation the court could impose if the defendant were convicted. The agreement cannot include a condition the court could not impose as a condition of probation.
Subd. 2. Filing of Agreement; Release. ~~Promptly after the agreement is made and approved by the court~~If a diversion agreement is reached, the ~~prosecuting attorney shall~~prosecutor must file the agreement ~~together~~along with a statement ~~that pursuant to the agreement the prosecution is suspended for a period specified in the statement~~suspending the prosecution for a specified time with the court. ~~Upon the filing, the~~The defendant ~~shall~~ must be	Subd. 2. Filing of Agreement; Release. If a diversion agreement is reached, the prosecutor must file the agreement along with a statement suspending the prosecution for a specified time with the court. The defendant must be released when the agreement is filed.

released ~~from any custody under Rule 6~~when the agreement is filed.	
Subd. 3. Modification~~ of Agreement~~. ~~Subject to subdivisions 1 and 2 of this rule and~~The parties, with the court's approval, ~~the parties by mutual consent may~~may agree to modify the terms of the ~~agreement at any time before its termination~~diversion.	Subd. 3. Modification. The parties, with the court's approval, may agree to modify the terms of the diversion.
Subd. 4. Termination of Agreement~~;~~ and Resumption of Prosecution.	Subd. 4. Termination of Agreement and Resumption of Prosecution.
(1) ~~Upon~~ Defendant's Notice. ~~The agreement is terminated and the prosecution may resume as if there had been no agreement if the defendant files a notice that the agreement is terminated~~The defendant may terminate the agreement by filing a termination notice with the court. The prosecution will then proceed.	(1) Defendant's Notice. The defendant may terminate the agreement by filing a termination notice with the court. The prosecution will then proceed.
(2) ~~Upon Order of Court~~Prosecutor's Motion. The court may ~~order the agreement terminated and the prosecution resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing,~~terminate the agreement on the prosecutor's motion if the court finds ~~that~~:	(2) Prosecutor's Motion. The court may terminate the agreement on the prosecutor's motion if the court finds:
a. the defendant or defense counsel misrepresented material facts affecting the agreement~~, if the motion is made~~ and the prosecutor moves to terminate the agreement within ~~six~~6 months after ~~the date of the agreement~~it commences; or	a. the defendant or defense counsel misrepresented material facts affecting the agreement and the prosecutor moves to terminate the agreement within 6 months after it commences; or
b. the defendant has committed a material violation of the agreement, ~~if~~and the prosecutor makes the motion ~~is made no~~t later than ~~one~~1 month after the ~~expiration of the~~suspension period ~~of suspension~~ specified in the agreement expires.	b. the defendant has committed a material violation of the agreement, and the prosecutor makes the motion no later than 1 month after the suspension period specified in the agreement expires.
~~Subd. 5. Emergency Order~~(3) Issuance of Warrant or Summons. The court ~~by warrant may direct any officer authorized by law to bring the defendant forthwith before the court for the hearing of the motion if the court finds~~	(3) Issuance of Warrant or Summons. The court may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit or testimony, finds:

~~from affidavit or testimony that~~may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit or testimony, finds:	
(~~1~~a) ~~there is~~ probable cause exists to believe the defendant committed a material violation of the agreement; and	(a) probable cause exists to believe the defendant committed a material violation of the agreement; and
(~~2~~b) ~~there is~~ a substantial likelihood exists that the defendant ~~otherwise~~ will not ~~attend the~~appear at a termination hearing.	(b) a substantial likelihood exists that the defendant will not appear at a termination hearing.
~~In any case the~~In lieu of a warrant, the court may issue a summons ~~instead of a warrant to secure the~~ordering the defendant to appear~~ance of the defendant at the hearing~~.	In lieu of a warrant, the court may issue a summons ordering the defendant to appear.
Subd. ~~6~~5. Release Status upon Resumption of Prosecution. If ~~prosecution resumes under subdivision 4 of this rule~~the agreement is terminated, the defendant ~~shall~~ must return to the release status in effect before the ~~prosecution was suspended~~agreement, unless the court ~~imposes additional or different conditions of release~~alters those terms under Rule 6.	Subd. 5. Release Status upon Resumption of Prosecution. If the agreement is terminated, the defendant must return to the release status in effect before the agreement, unless the court alters those terms under Rule 6.
Subd. ~~7~~6. Termination of Agreement~~;~~ and Dismissal of Charges.	Subd. 6. Termination of Agreement and Dismissal of Charges.
(A) Automatic Dismissal. ~~If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the complaint, indictment, or tab charge shall be~~ The charges must be dismissed ~~by order of the court one~~1 month after ~~expiration of the period of~~the suspension period specified ~~by~~ in the agreement expires unless the prosecutor earlier moved to terminate the agreement.	(A) Automatic Dismissal. The charges must be dismissed 1 month after the suspension period specified in the agreement expires unless the prosecutor earlier moved to terminate the agreement.
(B) Dismissal of Motion. ~~If such a motion is then pending, the agreement is terminated and the complaint, indictment, or tab charge shall be dismissed by order of the court upon entry of a final order denying the motion.~~If the court denies the motion to resume prosecution, and	(B) Dismissal of Motion. If the court denies the motion to resume prosecution, and the specified suspension time has elapsed, the charges must be dismissed.

the specified suspension time has elapsed, the charges must be dismissed. (C) Effect of Dismissal. ~~Following a dismissal under this subdivision the defendant may not be further prosecuted for the offense involved~~If the court dismisses the charge under this rule, the defendant cannot be prosecuted for it.	(C) Effect of Dismissal. If the court dismisses the charge under this rule, the defendant cannot be prosecuted for it.
Subd. ~~8~~7. Termination and Dismissal ~~up~~on a Showing of Rehabilitation. The court may ~~order the agreement terminated~~terminate the agreement, dismiss the ~~prosecution~~charges, and ~~bar further~~prohibit further prosecution ~~of the offense involved~~ if:~~,~~ (1) ~~upon motion of~~ a party moves for termination and provides ~~stating~~ facts supporting ~~the motion and~~it; (2) the court gives the parties an opportunity to be heard~~,~~; (3) the court finds ~~that~~ the defendant has not committed ~~no later~~any additional offenses~~; as specified in the agreement~~ and (4) the court finds the defendant appears to be rehabilitated.	Subd. 7. Termination and Dismissal on a Showing of Rehabilitation. The court may terminate the agreement, dismiss the charges, and prohibit further prosecution if: (1) a party moves for termination and provides facts supporting it; (2) the court gives the parties an opportunity to be heard; (3) the court finds the defendant has not committed any additional offenses; and (4) the court finds the defendant appears to be rehabilitated.
Subd. ~~9~~8. Modification or Termination ~~and Dismissal Upon Defendant's Motion~~. If~~, upon motion of the defendant and hearing,~~ the court finds ~~that~~ the ~~prosecuting attorney~~prosecutor obtained the defendant's ~~consent to the~~ agreement to diversion because of ~~as a result of~~ a material misrepresentation by the prosecutor or a person covered by ~~the prosecuting attorney's obligation under~~ Rule 9.01, subd. 1(7), the court may: (1) ~~order appropriate modification of the terms resulting from~~modify the parts of the agreement related to the misrepresentation; or (2) if ~~the court determines that the interests of~~ justice requires, ~~order~~ terminate the agreement ~~terminated, dismiss the prosecution, and bar further~~and prohibit further prosecution ~~for the offense involved~~of the charge.	Subd. 8. Modification or Termination. If the court finds the prosecutor obtained the defendant's agreement to diversion because of a material misrepresentation by the prosecutor or a person covered by Rule 9.01, subd. 1(7), the court may: (1) modify the parts of the agreement related to the misrepresentation; or (2) if justice requires, terminate the agreement and prohibit further prosecution of the charge.

Comment—Rule 27

~~*Rule 27.01 (Conditions of Release) is based on F.R.Crim.P. 32, 46(c) and 28 U.S.C. § 3148. Pending sentence the conditions for defendant's release or whether the defendant should be confined are to be determined under Rules 6.02, subd. 1 and subd. 2, governing pre-trial release, but the defendant has the burden of establishing the defendant will not flee or pose a danger to any other person or to the community.*~~

Minn. Const. Art. I, § 7, provides that all persons ~~shall~~ before conviction must be bailable by sufficient sureties. The defendant is not entitled to bail as a matter of right after conviction.

Rule 27.02 (Presentence Investigation in Misdemeanor Cases.) ~~In misdemeanor cases the presentence investigation report may be oral rather than written and this will often be the case. Where the report is oral, the defendant or defense counsel must be allowed to hear the report when given.~~ If a presentence report is prepared, the officer conducting the investigation is required by Minn. Stat. § 609.115, subd. 1 and Minn. Stat. § 611A.037 to advise the victim of the crime concerning the victim's rights under those statutes and under Minn. Stat. § 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

~~*Rule 27.03 (Sentencing Proceedings.)*~~

~~*Rule 27.03, subd. 1 (Hearings) adopts for misdemeanors and gross misdemeanors the provisions for summary hearings upon the presentence report and sentence contained in Minn. Stat. §§ 609.115, subd. 4, and 631.20 (1982). The provision for notice of any part of the presentence report that a party intends to controvert comes from ABA Standards, Sentencing Alternatives and Procedures, 18-5.5 (Approved Draft, 1979). Of course, where the*~~

Comment—Rule 27

Minn. Const. Art. I, § 7, provides that all persons before conviction must be bailable by sufficient sureties. The defendant is not entitled to bail as a matter of right after conviction.

Rule 27.02 (Presentence Investigation in Misdemeanor Cases.) If a presentence report is prepared, the officer conducting the investigation is required by Minn. Stat. § 609.115, subd. 1 and Minn. Stat. § 611A.037 to advise the victim of the crime concerning the victim's rights under those statutes and under Minn. Stat. § 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

The sentencing hearings "as provided by law" under Rule 27.03, subd. 1 would include restitution proceedings under Minn. Stat. §§ 611A.04 and 611A.045.

The Sentencing Guidelines Commission recommends that where the felony being sentenced involves a sexual offense, that the trial court order a physical or mental examination of the offender as a supplement to the presentence investigation permitted by Minn. Stat. § 609.115. Minnesota Sentencing Guidelines and Commentary, Training Material, III. E. Rule 27.03, subd. 1(B) permits the court to order these examinations. This rule does not preclude a post-sentence investigation whenever required by statute (Minn. Stat. § 609.115, subd. 2 (sentence of life imprisonment)) or whenever the court considers one necessary. The presentence investigation may include the information obtained on the pretrial release investigation under Rule 6.02, subd. 3. If a defendant is convicted of a domestic abuse offense as defined by Minn. Stat. § 609.2244, subd. 1, a presentence domestic abuse investigation

~~report is oral there would be no opportunity to give such notice and possibly no chance to controvert objectionable information contained in the report. Both parties are entitled to an opportunity to controvert even parts of an oral report and to do this the court may continue the sentencing so evidence can be obtained.~~The sentencing hearings "as provided by law" under Rule 27.03, subd. 1 would include restitution proceedings under Minn. Stat. §§ 611A.04 and 611A.045~~ (1988)~~. ~~The authorization and procedure to obtain restitution as set forth in the Minnesota rules and statutes substantially conforms to the "Guidelines Governing Restitution to Victims of Criminal Conduct" approved by the American Bar Association on August 9-10, 1988.~~

~~Sentencing in felony cases for offenses committed on or after May 1, 1980, is governed by Minn. Stat., Ch. 244 and the Minnesota Sentencing Guidelines promulgated pursuant to those statutes. The more complex procedures required by these rules for felony cases are necessary for a proper sentencing decision under the sentencing guidelines. Because of the adoption of the Minnesota Sentencing Guidelines an ad hoc volunteer committee chaired by Chief Justice Douglas Amdahl drafted proposed rules for sentencing under the guidelines. These rules were approved by the District Court Judges Association and the Ramsey County District Court Judges. The proposals of the ad hoc committee have been substantially incorporated into Rules 27.03, subds. 1 through 5 and these comments.~~

The Sentencing Guidelines Commission recommends that where the felony being sentenced ~~involved~~involves a sexual offense, that the trial court order a physical or mental examination of the offender as a supplement to the presentence investigation permitted by Minn. Stat. § 609.115. Minnesota Sentencing Guidelines and Commentary, Training Material, III. E. ~~(Hereinafter referred to as Training~~ must be conducted. A report must then be submitted to the court that meets the requirements in Minn. Stat. § 609.2244, subd. 2.

The Advisory Committee strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet before the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and may later be included with any presentence investigation report required under Rule 27.03, subd. 1.

The date for the return of the presentence investigation report should be set sufficiently in advance of sentencing to allow counsel sufficient time to make any motion under Rule 27.03, subd. 1(B)(6). The officer conducting the presentence investigation is required by Minn. Stat. § 609.115 and Minn. Stat. § 611A.037 to advise any victim of the crime concerning the victim's rights under those statutes and under Minn. Stat. § 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

Rule 27.03, subd. 1(B)(7) is in accord with Minn. Stat. § 244.10, subd. 1, which requires that the court issue written findings of fact, conclusions of law and appropriate order on the issues raised at the sentencing hearing at the conclusion of the hearing or within twenty days afterwards.

In Rule 27.03, subd. 1(B)(8) the term "sentencing hearing" refers to the hearing required by Minn. Stat. § 244.10, subd. 1 on issues of sentencing. In the usual case, actual sentencing should immediately follow.

Minn. Stat. § 611A.06 requires the Commissioner of Corrections or other custodial authority to notify the victim of the

~~*Manual.)*~~ *Rule 27.03, subd. 1(*~~*A*~~*B) permits the court to order* ~~*such*~~*these examinations. This rule* ~~*is*~~*does not* ~~*intended to*~~ *preclude a post-sentence investigation whenever required by statute (Minn. Stat. § 609.115, subd. 2 (sentence of life imprisonment)) or whenever the court considers one necessary. The presentence investigation may include the information obtained on the pretrial release investigation under Rule 6.02, subd. 3. If a defendant is convicted of a domestic abuse offense as defined by Minn. Stat. § 609.2244, subd. 1, a presentence domestic abuse investigation must be conducted. A report must then be submitted to the court* ~~*which*~~*that meets the requirements* ~~*set forth*~~ *in Minn. Stat. § 609.2244, subd. 2.*

The Advisory Committee strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet ~~*prior to*~~*before the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and may later be included with any presentence investigation report required under Rule 27.03, subd. 1.*

The date for the return of the presentence investigation report should be set sufficiently in advance of sentencing to allow counsel sufficient time to make any motion ~~*pursuant to*~~*under Rule 27.03, subd. 1(*~~*D*~~*B)(6). The officer conducting the presentence investigation is required by Minn. Stat. § 609.115 and Minn. Stat. § 611A.037 to advise any victim of the crime concerning the victim's rights under those statutes and under Minn. Stat.§ 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.*

~~*The date of the sentencing should be determined after consultation with counsel to determine if unusual problems are anticipated in obtaining the information necessary to complete the report of the presentence crime when an offender is to be released from imprisonment. Minn. Stat. § 611A.0385 further requires that the court or its designee shall at the time of the sentencing make reasonable good faith efforts to inform any identifiable victims of their right to such notice under Minn. Stat. § 611A.06.*

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.

Rule 27.03, subd. 4(D) is designed to eliminate any possible due process notice problems where a defendant does not request a sentencing hearing because of an expectation of receiving a sentence in conformance with the sentencing guidelines. It is also anticipated that fewer sentencing hearings will be requested by the prosecution and defense so long as an opportunity exists to request such a hearing after notice that the court might depart from the guidelines.

Rule 27.03, subd. 4(E) avoids any due process notice problems if the court revokes probation and executes the sentence. Except as provided in Minn. Stat. § 609.135, subd.7, a defendant has a right to refuse probation when the conditions of the probation are more onerous than a prison sentence, State v. Randolph, 316 N.W.2d 508 (Minn.1982).

Rule 27.04 does not require an initial probable cause hearing on the probation violation report. The hearing is not constitutionally required if the defendant is

~~*investigation (e.g., securing necessary documentation of out-of-state convictions needed to compute the criminal history index score).*~~ ~~*As to the confidential information section of a presentence investigation report mentioned in Rule 27.03, subd. 1(C), see County of Sherburne v. Schoen, 306 Minn. 171, 236 N.W.2d 592 (1975).*~~ ~~*The ad hoc committee suggested that judges rely on the facts of the conviction offense or offenses considered in the light of factors such as are set forth in the guidelines as a ground for departure and not ask for recommendations for departure from the presentence investigator.*~~ ~~*Rule 27.03, subd. 1(D) essentially continues existing practice and imposes time requirements. Unlike Minn. Stat. § 244.10, subd. 1, this rule does require that the motion for a sentencing hearing include grounds.*~~ *Rule 27.03, subd. 1(~~F~~B)(7) is in accord with Minn. Stat. § 244.10, subd. 1, which requires that the court issue written findings of fact, conclusions of law and appropriate order on the issues raised at the sentencing hearing ~~be issued~~ at the conclusion of the hearing or within twenty days ~~thereafter~~afterwards.* *In Rule 27.03, subd. 1(~~G~~B)(8) the term "sentencing hearing" refers to the hearing required by Minn. Stat. § 244.10, subd. 1 on issues of sentencing. In the usual case, actual sentencing should immediately follow.* ~~*Rule 27.03, subd. 2 (Defendant's Presence at Hearing and Sentencing) is adopted from F.R.Crim.P. 43. See also N.Y.C.P.L. 380.40. The interpreter requirement is based upon Rule 5 and Minn. Stat. §§ 611.31- 611.34 (1992).*~~ ~~*Rule 27.03, subd. 3 (Statements at the Time of Sentencing) is based on ABA Standards,*~~	*not in custody or if the final revocation hearing is held within the time that the preliminary hearing would otherwise be required. Pearson v. State, 308 Minn. 287, 241 N.W.2d 490 (1976). It is, however, necessary under Rule 27.04, subd. 1(2) that the defendant be brought before the court after arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.* *Rule 27.05 (Pretrial Diversion) does not preclude the prosecutor and defendant from agreeing to diversion of a case without court approval if charges are not pending before the court. The requirement in subd. 1(1) that the prosecutor give "due consideration of the victim's views" is in accord with the requirement in Minn. Stat. § 611A.031 that the prosecuting attorney "make every reasonable effort to notify and seek input from the victim" before employing pretrial diversion for certain specified offenses.* *With the approval of the court, the conditions specified in Rule 27.05, subd. 1(2), including restitution, may be included in the pretrial diversion agreement. See Minn. Stat. §§ 611A.04 and 611A.045 as to requiring restitution as part of a sentence.* *Under Rule 27.05, subd. 1(3), no condition may be included in the pretrial diversion agreement that could not be imposed upon probation after conviction of the crime charged. See Minn. Stat. § 609.135 as to the permissible conditions of probation. See Minn. Stat. § 611A.031 regarding the prosecutor's duties under the Victim's Rights Act, for certain designated offenses, to make every reasonable effort to notify and seek input before placing a person into a pretrial diversion program.*

~~*Sentencing Alternatives and Procedures, 18-6.3 and 18-6.4 (Approved Draft, 1979). See also N.Y.C.P.L. 380.50. The right of the victim of the crime to make a statement at sentencing is in accord with Minn. Stat. § 611A.038.*~~

~~*Rule 27.03, subd. 4 (Imposition of Sentence) parts (A) and (B) are based on ABA Standards, Sentencing Alternatives and Procedures, 18-6.6iii, iv (Approved Draft, 1979). Existing law relating to probation is continued (Minn. Stat. §§ 609.135, 609.14).*~~

Minn. Stat. § 611A.06 requires the Commissioner of Corrections or other custodial authority to notify the victim of the crime when an offender is to be released from imprisonment. Minn. Stat. § 611A.0385 further requires that the court or its designee shall at the time of the sentencing make reasonable good faith efforts to inform any identifiable victims of their right to such notice under Minn. Stat. § 611A.06.

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.

Rule 27.03, subd. 4(D) is designed to eliminate any possible due process notice problems where a defendant does not request a sentencing hearing because of an expectation of receiving a sentence in conformance with the sentencing guidelines. It is also anticipated that fewer sentencing hearings will be requested by the prosecution and defense so long as ~~there is~~ an opportunity exists to request such a hearing after notice that the court might depart from the

guidelines.

Rule 27.03, subd. 4(E) ~~is designed to~~ avoid~~s~~ any due process notice problems if the court revokes probation ~~is revoked~~ and executes the sentence ~~executed~~. ~~A~~Except as provided in Minn. Stat. § 609.135, subd.7, a defendant has a right to refuse probation when the conditions of the probation are more onerous than a prison sentence, State v. Randolph, 316 N.W.2d 508 (Minn.1982).

~~*As to part (E)(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 section 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).*~~ ~~*Rule 27.03, subd. 5 (Notice of Right to Appeal) is based on F.R.Crim.P. 32. Failure to notify the defendant of the right to appeal does not extend the time for appeal. Minn. Stat. § 244.11 authorizes either the defendant or the state to appeal from a sentence whether imposed or stayed. See Rule 28.05 for the procedure to be followed on such an appeal.*~~ ~~*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). To the extent there is any conflict, the provisions of this rule supersede the provisions of Minnesota Statutes, section 243.49 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.*~~ ~~*Rule 27.03, subd. 7 (Judgment), stating what the record of the judgment shall contain, is adapted from F.R.Crim.P. 32(b). The sentence or stay of imposition of sentence constitutes an adjudication of guilt if the court does not sooner make such an adjudication.*~~ ~~*Rule 27.03, subd. 8 (Clerical Mistakes) for correction of clerical mistakes is taken from F.R.Crim.P. 36.*~~	

~~*Rule 27.03, subd. 9 (Correction or Reduction of Sentence), adopted from F.R.Crim.P. 35, permits the court to correct an unauthorized sentence at any time. This would include a failure to follow proper procedures in connection with the imposition of sentence. The rule also permits the court at any time to modify a sentence during either a stay of imposition or stay of execution of sentence except to increase the period of confinement. The powers of the court under this rule are not limited by the duration or expiration of a term of court. Other remedies available in connection with the sentence are provided for the post-conviction remedy (Minn. Stat. Ch. 590).*~~ ~~*Rule 27.04 (Probation Revocation) sets forth the procedure to be followed to assure that a defendant is accorded all constitutional rights to due process as set forth in Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471 (1972) before probation is revoked. The rule is based primarily on ABA Standards, Sentencing Alternatives and Procedures, 18-7.5 (Approved Draft, 1979) except that no preliminary hearing to determine probable cause is required.*~~ *Rule 27.04 does not require an initial probable cause hearing on the probation violation report.* ~~*Such a*~~*The hearing*~~*, however,*~~ *is not constitutionally required if the defendant is not in custody or if the final revocation hearing is held within the time that the preliminary hearing would otherwise be required. Pearson v. State, 308 Minn. 287, 241 N.W.2d 490 (1976).* ~~*The requirement of Rule 27.04, subd. 2(4) that the final revocation hearing be held within seven days if the defendant is in custody makes a preliminary hearing constitutionally unnecessary.*~~ *It is, however, necessary under Rule 27.04, subd. 1(2) that the defendant be brought before the court after arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.*	

~~*At that time the court may order the defendant released under Rule 27.04, subd. 2(3) pending the final revocation hearing. At that initial appearance the defendant shall also be given the written report showing probable cause if not already provided, have counsel appointed if necessary, be advised as to the rights under the rule, and have a time set for the final revocation hearing.*~~

~~*The provisions in Rule 27.04, subd. 1(1) as to the contents of the written report and in Rule 27.04, subd. 2(1) as to the defendant's various procedural rights are taken from ABA Standards, Sentencing Alternatives and Procedures, 18-7.5(d) and (e) (Approved Draft, 1979). The interpreter requirement is based upon Rule 5 and Minn. Stat. §§ 611.31– 611.34 (1992). The provisions in Rule 27.04, subd. 2(3) concerning release of the defendant are similar to those set forth in Rule 27.01 concerning release of a defendant pending sentencing. The standard of proof set forth in Rule 27.04, subd. 3(2) and (3) is taken from ABA Standards, Sentencing Alternatives and Procedures, 18-7.5(e).*~~

Rule 27.05 (Pretrial Diversion) ~~*is based on Unif.R.Crim.P. 442 (1987) and ABA Standards for Criminal Justice 10-6.1 through 10-6.3 (1985) except that court approval is required for all pretrial diversion when charges are pending during the period of diversion. This rule*~~ *does not preclude the* *prosecutor* ~~*prosecuting attorney*~~ *and defendant from agreeing to diversion of a case without court approval if charges are not pending before the court. The requirement in subd. 1(1) that the* *prosecutor* ~~*prosecuting attorney*~~ *give "due consideration of the victim's views" is in accord with the requirement in Minn. Stat. § 611A.031 that the prosecuting attorney "make every reasonable effort to notify and seek input from the victim" before employing pretrial diversion for certain specified offenses.*

With the approval of the court, the conditions specified in Rule 27.05, subd. 1(2), including restitution, may be included in the pretrial diversion agreement. See Minn. Stat. §§ 611A.04 and 611A.045 as to requiring restitution as part of a sentence. *Under Rule 27.05, subd. 1(3), no condition may be included in the pretrial diversion agreement that could not be imposed upon probation after conviction of the crime charged. See Minn. Stat. § 609.135 as to the permissible conditions of probation. See Minn. Stat. § 611A.031 regarding the prosecutor's duties under the Victim's Rights Act, for certain designated offenses, to make every reasonable effort to notify and seek input ~~prior to~~before placing a person into a pretrial diversion program.*	

Proposed Revisions to Minn. R. Crim. P. 28

Original Language Showing Markup	Proposed Revised Language
Rule 28. Appeals to Court of Appeals **Rule 28.01 Scope of Rule** Subd. 1. Appeals from District Court. In misdemeanor, gross misdemeanor, and felony cases, Rule 28 governs the procedure for appeals ~~in misdemeanor, gross misdemeanor, and felony cases~~ from the district courts to the Court of Appeals ~~except for cases in which~~unless the defendant has been convicted of first-degree murder ~~in the first degree~~. Subd. 2. Applicability of Rules of Civil Appellate Procedure. ~~Except as otherwise provided in these rules,~~ To the extent applicable, the Minnesota Rules of Civil Appellate Procedure ~~to the extent applicable shall~~ govern appellate ~~procedures in such cases~~ procedure unless these rules direct otherwise. Subd. 3. Suspension of Rules. ~~In the interest of expediting decision, or for other~~For good cause ~~shown~~, the Court of Appeals may suspend ~~the requirements or provisions~~application of any of these rules ~~in a particular case on application of~~ on its own initiative or on a party's motion, ~~or on its own initiative,~~ and may order proceedings ~~in accordance with its direction~~as it directs, but ~~the Court of Appeals~~it may not alter the time for filing the notice of appeal ~~except as provided by these rules~~unless permitted by Rule 28.02, subd. 4(3)(g). **Rule 28.02 Appeal by Defendant** Subd. 1. Review by Appeal. ~~Except as provided by law for the issuance of the extraordinary writs and for the Post-Conviction Remedy, a~~A defendant may obtain Court of	**Rule 28. Appeals to Court of Appeals** **Rule 28.01 Scope of Rule** Subd. 1. Appeals from District Court. In misdemeanor, gross misdemeanor, and felony cases, Rule 28 governs the procedure for appeals from the district courts to the Court of Appeals unless the defendant has been convicted of first-degree murder. Subd. 2. Applicability of Rules of Civil Appellate Procedure. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise. Subd. 3. Suspension of Rules. For good cause, the Court of Appeals may suspend application of any of these rules on its own initiative or on a party's motion, and may order proceedings as it directs, but it may not alter the time for filing the notice of appeal unless permitted by Rule 28.02, subd. 4(3)(g). **Rule 28.02 Appeal by Defendant** Subd. 1. Review by Appeal. A defendant may obtain Court of Appeals review of district court orders and rulings only as these rules permit, or as permitted by the law

Appeals review of district court orders and rulings ~~of the district courts by the Court of Appeals only by appeal as provided by~~only as these rules permit, or as permitted by the law for the issuance of the extraordinary writs and for the Post-Conviction Remedy. Writs of error are abolished.	for the issuance of the extraordinary writs and for the Post-Conviction Remedy. Writs of error are abolished.
Subd. 2. Appeal as of Right.	Subd. 2. Appeal as of Right.
(1) Final Judgment and Postconviction Appeal. A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. ~~Ch.~~ch. 590. A final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction ~~shall be considered final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury or the finding of the court,~~ and imposes ~~sentence~~ or stays ~~is imposed or the imposition of~~a sentence ~~is stayed~~.	(1) Final Judgment and Postconviction Appeal. A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minn. Stat. ch. 590. A final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction and imposes or stays a sentence.
(2) Orders. A defendant ~~may~~ cannot appeal until the district court enters an adverse final judgment ~~adverse to the defendant has been entered by the trial court except that a defendant may~~, but may appeal:	(2) Orders. A defendant cannot appeal until the district court enters an adverse final judgment, but may appeal:
(a) from an order refusing or imposing conditions of release; or	(a) from an order refusing or imposing conditions of release; or
(b) in felony and gross misdemeanor cases from and order:	(b) in felony and gross misdemeanor cases from an order:
1. ~~an order g~~granting a new trial, and ~~when~~ the defendant claims that the ~~trial~~district court should have entered a final judgment in the defendant's favor;	1. granting a new trial, and the defendant claims that the district court should have entered a final judgment in the defendant's favor;
2. ~~an order,~~ not on the defendant's motion, finding the defendant incompetent to stand trial~~,~~; or	2. not on the defendant's motion, finding the defendant incompetent to stand trial; or
3. ~~an order~~ denying a motion to dismiss a complaint following a mistrial, ~~where the issue is whether~~ and the defendant claims retrial would violate double jeopardy.	3. denying a motion to dismiss a complaint following a mistrial, and the defendant claims retrial would violate double jeopardy.
(3) Sentences. A defendant may appeal	(3) Sentences. A defendant may appeal

as of right from any sentence imposed or stayed in a felony case. ~~All other sentences may be reviewed only pursuant to~~ Rule 28.02, subd. 3 governs sentencing appeals in non-felony cases.	as of right from any sentence imposed or stayed in a felony case. Rule 28.02, subd. 3 governs sentencing appeals in non-felony cases.
Subd. 3. Discretionary ~~Appeal~~Review. ~~The Court of Appeals in~~ In the interests of justice and ~~up~~on petition of the defendant, the Court of Appeals may allow an appeal from an order not otherwise appealable, ~~except~~ but not from an order made during trial~~,~~. ~~in the manner provided by the Minnesota Rules of Civil Appellate Procedure, provided that the~~ The petition ~~shall~~must be served and filed within ~~thirty (~~30~~)~~ days after entry of the order appealed. Minnesota Rule of Civil Appellate Procedure 105 governs the procedure for the appeal.	Subd. 3. Discretionary Review. In the interests of justice and on petition of the defendant, the Court of Appeals may allow an appeal from an order not otherwise appealable, but not from an order made during trial. The petition must be served and filed within 30 days after entry of the order appealed. Minnesota Rule of Civil Appellate Procedure 105 governs the procedure for the appeal.
Subd. 4. Procedure for Appeals Other than Sentencing Appeals.	Subd. 4. Procedure for Appeals Other than Sentencing Appeals.
(1) Service and Filing. ~~An appeal shall be taken~~A defendant appeals by filing a notice of appeal with the clerk of the appellate courts ~~together~~ with proof of service on the ~~prosecuting attorney~~ prosecutor, the Minnesota ~~a~~Attorney ~~g~~General, ~~for the State of Minnesota, and the clerk of the trial court in which the judgment or order appealed from is entered~~and the court administrator for the county in which the judge 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. ~~A bond shall not be required of a defendant for exercising the right to appeal.~~ The defendant does not have to post bond to appeal. ~~Unless otherwise ordered by the appellate court, defendant need not file a certified copy of the judgment or order appealed from or a statement of the case as provided for by Rule~~	(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 judge 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.

~~133.03 of the Minnesota Rules of Civil Appellate Procedure.~~ The defendant's failure ~~of the defendant~~ to take any ~~other~~ step other than timely filing the notice of appeal does not affect the validity of the appeal, but ~~is ground only for such~~ permits action ~~as~~ the Court of Appeals deems appropriate, including dismissal ~~of the appeal~~.	
(2) Contents of Notice of Appeal. The notice of appeal ~~shall~~ must specify:	(2) Contents of Notice of Appeal. The notice of appeal must specify:
(a) the party or parties taking the appeal;	(a) the party or parties taking the appeal;
(b) ~~shall give~~ the names, addresses, and telephone numbers of all counsel and ~~indicate~~ whom they represent;	(b) the names, addresses, and telephone numbers of all counsel and whom they represent;
(c) ~~shall designate~~ the judgment or order from which appeal is taken; ~~-~~and	(c) the judgment or order from which appeal is taken; and
(d) ~~shall state~~ that the appeal is to the Court of Appeals.	(d) that the appeal is to the Court of Appeals.
(3) Time for Taking an Appeal.	(3) Time for Taking an Appeal.
(a) In felony and gross misdemeanor cases, an appeal by the defendant must ~~An appeal by a defendant shall be taken~~ be filed within 90 days after final judgment or entry of the order being appealed ~~from in felony and gross misdemeanor cases~~. ~~Upon the felony or gross misdemeanor appeal, other~~ Other charges ~~which~~ that were joined for prosecution with the felony or gross misdemeanor may be included in the appeal.	(a) In felony and gross misdemeanor cases, an appeal by the defendant must be filed within 90 days after final judgment or entry of the order being appealed. Other charges that were joined for prosecution with the felony or gross misdemeanor may be included in the appeal.
(b) In misdemeanor cases, ~~An appeal by a~~ an appeal by the defendant ~~shall be taken~~ must be filed within 10 days after final judgment or entry of the order being appealed ~~from in misdemeanor cases~~.	(b) In misdemeanor cases, an appeal by the defendant must be filed within 10 days after final judgment or entry of the order being appealed.
(c) In postconviction relief cases, an~~An~~ appeal by the defendant from an order denying a petition for postconviction relief ~~shall~~ must be ~~taken~~filed within 60 days after entry of the order.	(c) In postconviction relief cases, an appeal by the defendant from an order denying a petition for postconviction relief must be filed within 60 days after entry of the order.
(d) A notice of appeal filed after the announcement of a decision or order~~,~~ – but before sentencing or entry of judgment or order – ~~shall~~must be treated as filed after, but on the same day as ~~such entry or~~ sentencing or entry of judgment ~~and on the day thereof~~.	(d) A notice of appeal filed after the announcement of a decision or order – but before sentencing or entry of judgment or order – must be treated as filed after, but on the same day as sentencing or entry of judgment.

(e) ~~If a~~ A timely motion to vacate the judgment, for judgment of acquittal, or for a new trial ~~has been made,~~ tolls the time for an appeal from a final judgment ~~does not begin to run~~ until the entry of an order denying the motion, and the order denying the motion may be reviewed ~~upon~~in the appeal from the judgment.	(e) A timely motion to vacate the judgment, for judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in the appeal from the judgment.
(f) A judgment or order is entered ~~within the meaning of~~ under these appellate rules when ~~it is entered upon~~ the court administrator enters it in the record ~~of the clerk of the trial court~~.	(f) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.
(g) For good cause, the ~~trial~~district court or a judge of the Court of Appeals may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal ~~for a period not to exceed~~ up to 30 days from the expiration of the time ~~otherwise prescribed herein for appeal~~prescribed by these rules.	(g) For good cause, the district court or a judge of the Court of Appeals may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.
(4) Stay of Appeal for Postconviction Proceedings. If, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings.	(4) Stay of Appeal for Postconviction Proceedings. If, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings.
Subd. 5. Proceeding~~s~~ in Forma Pauperis. ~~Proceedings on appeal or postconviction~~A defendant who wishes to proceed in forma pauperis under this rule ~~shall be as follows~~must follow this process:	Subd. 5. Proceeding in Forma Pauperis. A defendant who wishes to proceed in forma pauperis under this rule must follow this process:
(1) An indigent defendant wanting to appeal or to obtain postconviction relief ~~shall make application therefor to the office of~~ must apply to the State Public Defender's office.	(1) An indigent defendant wanting to appeal or to obtain postconviction relief must apply to the State Public Defender's office.
(2) The ~~office of the~~ State Public Defender's office ~~shall~~must promptly send ~~to such~~the applicant a financial inquiry form, preliminary questionnaire form, and ~~such~~ other forms as deemed appropriate.	(2) The State Public Defender's office must promptly send the applicant a financial inquiry form, preliminary questionnaire form, and other forms as deemed appropriate.
(3) The applicant ~~shall, if the applicant~~	(3) The applicant must completely fill

~~wants to pursue the application,~~ must completely fill out these forms, sign ~~each of these forms~~ them, and have his or her signature notarized ~~on each of these forms~~ if indicated.	out these forms, sign them, and have his or her signature notarized if indicated.
(4) The applicant ~~shall~~must then return these completed documents to ~~the office of~~ the State Public Defender's office for further processing.	(4) The applicant must then return these completed documents to the State Public Defender's office for further processing.
(5) The State Public Defender's office ~~shall~~must determine if the applicant is financially and otherwise eligible for representation. If the applicant ~~is so eligible~~ qualifies, then the State Public Defender's office ~~shall~~must provide representation in felony cases regarding a judicial review or an evaluation of the merits of a judicial review of the case~~, in a felony case~~ and may so represent the applicant in misdemeanor or gross misdemeanor cases. Upon the administrative determination by the State Public Defender's office ~~that the office~~that it will represent an applicant for ~~such~~ a judicial review or an evaluation of the merits of a judicial review of the case, the office~~the State Public Defender~~ is automatically appointed ~~for that purpose~~ without order of the court. The State Public Defender's office ~~shall~~must notify the applicant of its decision on representation and advise the applicant of any problem relative to the applicant's qualifications to obtain ~~the~~its services~~ of the State Public Defender's office~~. Any applicant who contests a decision of the State Public Defender's office that the applicant ~~is ineligible~~does not qualify for representation may apply to the Minnesota Supreme Court for relief.	(5) The State Public Defender's office must determine if the applicant is financially and otherwise eligible for representation. If the applicant qualifies, then the State Public Defender's office must provide representation in felony cases regarding a judicial review or an evaluation of the merits of a judicial review of the case, and may so represent the applicant in misdemeanor or gross misdemeanor cases. Upon the administrative determination by the State Public Defender's office that it will represent an applicant for a judicial review or an evaluation of the merits of a judicial review of the case, the office is automatically appointed without order of the court. The State Public Defender's office must notify the applicant of its decision on representation and advise the applicant of any problem relative to the applicant's qualifications to obtain its services. Any applicant who contests a decision of the State Public Defender's office that the applicant does not qualify for representation may apply to the Minnesota Supreme Court for relief.
(6) ~~All requests~~If the court receives a request for transcripts necessary for judicial review or other efforts to have cases reviewed ~~or efforts to have cases reviewed in which the~~from a defendant ~~is not represented by an attorney shall be referred by~~ who does not have counsel, the court ~~receiving the same to the office of~~must refer the request to the State Public Defender's office for processing as in	(6) If the court receives a request for transcripts necessary for judicial review or other efforts to have cases reviewed from a defendant who does not have counsel, the court must refer the request to the State Public Defender's office for processing as in paragraphs (2) through (5) above.

paragraphs (2) through (5) above. (7) ~~Requests~~If the court receives a request for transcripts made by an indigent defendant~~s who are~~ represented by private counsel, ~~shall be submitted~~ the court must submit the request to the State Public Defender's office ~~and processed in the following manner~~for processing as follows: a. The State Public Defender's office ~~shall~~ must determine financial eligibility of the applicant as in paragraphs (2) through (5) above. b. If the defendant ~~is~~ qualifies financially ~~eligible~~, he or she may request the State Public Defender to order all parts of the trial transcript necessary for effective appellate review. The State Public Defender's office ~~shall~~ must order and pay for ~~all parts of the transcript that are necessary for effective appellate review~~ these transcripts. c. If a dispute arises ~~concerning what~~ about the parts of the trial transcript ~~are~~ necessary for effective appellate review, the defendant or the State Public Defender's office may make a motion for resolution of the matter ~~may be made by the defendant or by the State Public Defender in~~ to the appropriate court. d. The State Public Defender's office ~~shall~~must provide the transcript to the indigent defendant's attorney for ~~the indigent defendant for the purpose of perfecting~~ use in the direct appeal. The attorney ~~shall~~must sign a receipt for the transcript agreeing to return it to the State Public Defender's office ~~when~~ after the appeal process ~~is complete~~. (8) All court administrators ~~shall~~ must furnish ~~the office of~~ the State Public Defender's office without charge copies of any documents ~~in their possession without charge~~ relevant to the case. (9) All fees~~,~~ – including appeal fees, hearing fees, or filing fees~~,~~ – ordinarily charged by the clerk of the appellate courts or court administrators ~~shall automatically be~~are waived ~~in cases in which~~ when the State Public Defender's office, or other public defender's	(7) If the court receives a request for transcripts made by an indigent defendant represented by private counsel, the court must submit the request to the State Public Defender's office for processing as follows: a. The State Public Defender's office must determine financial eligibility of the applicant as in paragraphs (2) through (5) above. b. If the defendant qualifies financially, he or she may request the State Public Defender to order all parts of the trial transcript necessary for effective appellate review. The State Public Defender's office must order and pay for these transcripts. c. If a dispute arises about the parts of the trial transcript necessary for effective appellate review, the defendant or the State Public Defender's office may make a motion for resolution of the matter to the appropriate court. d. The State Public Defender's office must provide the transcript to the indigent defendant's attorney for use in the direct appeal. The attorney must sign a receipt for the transcript agreeing to return it to the State Public Defender's office after the appeal process. (8) All court administrators must furnish the State Public Defender's office without charge copies of any documents relevant to the case. (9) All fees – including appeal fees, hearing fees, or filing fees – ordinarily charged by the clerk of the appellate courts or court administrators are waived when the State Public Defender's office, or other public defender's office, represents the defendant.

office, represents the defendant ~~in question~~. ~~Such~~ The court must also waive these fees ~~shall also be waived by the court upon~~ a sufficient showing by any other attorney that the defendant ~~is unable to~~ cannot pay ~~the fees required~~ them.	The court must also waive these fees on a sufficient showing by any other attorney that the defendant cannot pay them.
(10) ~~Unless otherwise specifically provided by Supreme Court order, the~~ The State Public Defender's office ~~shall~~must be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of ~~which county in the state is the county in which the defendant was accused~~ the county where the prosecution occurred, unless the Supreme Court directs otherwise.	(10) The State Public Defender's office must be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of the county where the prosecution occurred, unless the Supreme Court directs otherwise.
(11) In appeal cases and postconviction cases, ~~the cost of transcripts and other necessary expenses shall be borne by~~ the State of Minnesota must bear the cost of transcripts and other necessary expenses from funds available to the State Public Defender's office, if approved by that office, regardless of ~~which county in the state is the county in which the defendant was accused, if approved by the State Public Defender~~where the prosecution occurred.	(11) In appeal cases and postconviction cases, the State of Minnesota must bear the cost of transcripts and other necessary expenses from funds available to the State Public Defender's office, if approved by that office, regardless of where the prosecution occurred.
(12) ~~When a defendant is~~ For defendants represented on appeal by the State Public Defender's office, ~~the provision of Rule 110.02, subd. 2, of the~~ Minnesota Rule~~s~~ of Civil Appellate Procedure 110.02, subd. 2, concerning the certificate as to transcript, ~~shall~~ does not apply. ~~Rather, in such~~ In these cases, the State Public Defender's office ~~upon~~ on ordering the transcript ~~shall~~ must mail a copy of the written request for transcript to the court administrator ~~of the trial court~~, the clerk of the appellate courts, and the ~~prosecuting attorney~~ prosecutor. The court reporter ~~shall~~ must promptly acknowledge its receipt ~~of said order~~ and indicate acceptance ~~of it,~~ in writing, with copies to the court administrator ~~of the trial court~~, the clerk of the appellate courts, the State Public Defender's office, and the	(12) For defendants represented on appeal by the State Public Defender's office, Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2, concerning the certificate as to transcript, does not apply. In these cases, the State Public Defender's office on ordering the transcript must mail a copy of the written request for transcript to the court administrator, the clerk of the appellate courts, and the prosecutor. The court reporter must promptly acknowledge its receipt and indicate acceptance in writing, with copies to the court administrator, the clerk of the appellate courts, the State Public Defender's office, and the prosecutor. In so doing, the court reporter must state the estimated number of pages of the transcript and the estimated completion date. That date cannot exceed 60 days, but for

~~prosecuting attorney~~ prosecutor. In so doing, the court reporter ~~shall~~ must state the estimated number of pages of the transcript and the estimated completion date. That date cannot ~~not to~~ exceed 60 days, ~~except~~ but for guilty plea and sentencing ~~proceeding~~ transcripts, ~~which must be completed within~~ it cannot exceed 30 days. Upon delivery of the transcript, the reporter ~~shall~~ must file with the clerk of the appellate courts a certificate evidencing the date and manner of delivery.	guilty plea and sentencing transcripts, it cannot exceed 30 days. Upon delivery of the transcript, the reporter must file with the clerk of the appellate courts a certificate evidencing the date and manner of delivery.
(13) A defendant may proceed pro se on appeal only after the State Public Defender's office has first had the opportunity to file a brief on the defendant's behalf ~~of the defendant~~. ~~The~~ When that office ~~State Public Defender at the time of filing and serving~~ files and serves the brief, it ~~shall~~ must also provide a copy of the brief to the defendant. If the defendant then chooses to proceed pro se on appeal or to file a ~~supplementary~~supplemental brief, the defendant ~~shall~~ must so notify the State Public Defender's office.	(13) A defendant may proceed pro se on appeal only after the State Public Defender's office has first had the opportunity to file a brief on the defendant's behalf. When that office files and serves the brief, it must also provide a copy of the brief to the defendant. If the defendant then chooses to proceed pro se on appeal or to file a supplemental brief, the defendant must so notify the State Public Defender's office.
(14) Upon receiving notice ~~pursuant to~~ under paragraph (13) that the defendant has chosen to proceed pro se on appeal or to file a supplementa~~ry~~l brief, the State Public Defender's office ~~shall~~ must confer with the defendant about the reasons for choosing to do so and advise the defendant concerning the consequences ~~and ramifications~~ of that choice.	(14) Upon receiving notice under paragraph (13) that the defendant has chosen to proceed pro se on appeal or to file a supplemental brief, the State Public Defender's office must confer with the defendant about the reasons for choosing to do so and advise the defendant concerning the consequences of that choice.
~~———~~(15) ~~In order to~~ To proceed pro se on appeal following consultation, the defendant ~~shall~~ must sign and return to the State Public Defender's office a detailed waiver of counsel as provided by that office for the particular case.	(15) To proceed pro se on appeal following consultation, the defendant must sign and return to the State Public Defender's office a detailed waiver of counsel as provided by that office for the particular case.
(16) If the State Public Defender's office believes, after consultation, that the defendant may not be competent to waive counsel it ~~shall~~must assist the defendant in seeking an order from the district court	(16) If the State Public Defender's office believes, after consultation, that the defendant may not be competent to waive counsel it must assist the defendant in seeking an order from the district court determining the

determining the defendant's competency or incompetency ~~of the defendant~~.	defendant's competency or incompetency.
(17) The court must consider the brief filed by the State Public Defender's office on the defendant's behalf ~~of the defendant shall be considered by the court~~. A defendant, whether or not choosing to proceed pro se, may also file with the court a supplemental brief. The supplemental brief ~~shall~~ must be filed within 30 days after the State Public Defender's office files its initial brief ~~is filed by the State Public Defender~~.	(17) The court must consider the brief filed by the State Public Defender's office on the defendant's behalf. A defendant, whether or not choosing to proceed pro se, may also file with the court a supplemental brief. The supplemental brief must be filed within 30 days after the State Public Defender's office files its initial brief.
(18) If a defendant requests a copy of the transcript, the State Public Defender's office ~~shall~~ must confer with the defendant concerning the need for the transcript. If the defendant still requests a copy of ~~the transcript~~ it, ~~shall~~one must be provided to the defendant temporarily.	(18) If a defendant requests a copy of the transcript, the State Public Defender's office must confer with the defendant concerning the need for the transcript. If the defendant still requests a copy of it, one must be provided to the defendant temporarily.
(19) Upon receiving the transcript, the defendant must sign a receipt for it including an agreement not to make ~~the transcript~~ it available to other persons and to return the transcript to the State Public Defender's office ~~'s office upon expiration of~~ when the time to file any ~~supplementary~~supplemental brief expires.	(19) Upon receiving the transcript, the defendant must sign a receipt for it including an agreement not to make it available to other persons and to return the transcript to the State Public Defender's office when the time to file any supplemental brief expires.
(20) The transcript remains the property of the State Public Defender's office and must be returned ~~to that office~~ upon expiration of the time to file any supplemental brief. Upon return of the transcript, ~~to~~ the State Public Defender's office, ~~that office shall~~must provide the defendant with a copy of a signed receipt for it. The State Public Defender's office must promptly file the original of the receipt ~~shall be filed promptly~~ with the clerk of the appellate courts, and until that occurs, ~~it is filed the defendant's~~the clerk will not accept the supplemental brief ~~will not be accepted~~ for filing.	(20) The transcript remains the property of the State Public Defender's office and must be returned upon expiration of the time to file any supplemental brief. Upon return of the transcript, the State Public Defender's office must provide the defendant with a copy of a signed receipt for it. The State Public Defender's office must promptly file the original of the receipt with the clerk of the appellate courts, and until that occurs, the clerk will not accept the supplemental brief for filing.

Subd. 6. Stay. When ~~an appeal is taken by the~~a defendant files an appeal, this does not stay~~, the~~ execution of the judgment or sentence ~~shall not be stayed~~ unless a ~~stay is granted by the trial court~~district court judge or a judge of the appellate court grants a stay.	Subd. 6. Stay. When a defendant files an appeal, this does not stay execution of the judgment or sentence unless a district court judge or a judge of the appellate court grants a stay.
Subd. 7. Release of Defendant.	Subd. 7. Release of Defendant.
(1) Conditions of Release. ~~Upon appeal, if the~~ If a defendant appeals, and a court grants a stay ~~under subd. 6 of this rule~~, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release and the factors determining the conditions of release ~~shall be governed by Rule 6.02, subd. 1 and subd. 2,~~ except as ~~hereinafter~~ provided by this rule. The court ~~shall~~ must also take into consideration that the defendant may be compelled to serve the sentence imposed before the appellate court ~~has an opportunity to~~ decides the case.	(1) Conditions of Release. If a defendant appeals, and a court grants a stay, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release and the factors determining the conditions of release, except as provided by this rule. The court must also take into consideration that the defendant may be compelled to serve the sentence imposed before the appellate court decides the case.
(2) Burden of Proof. ~~Release~~ If a defendant was sentenced to incarceration, a court must not grant release pending appeal from a judgment of conviction ~~upon which the defendant was sentenced to incarceration shall not be granted~~ unless the defendant establishes to the court's satisfaction ~~of the court~~ that: (a) the appeal is not frivolous or taken for delay; and (b) ~~there is~~ no substantial risk exists: (i) that the defendant will ~~not~~fail to~~fail to~~ appear to answer the judgment following the conclusion of the appellate proceedings~~,~~; and (ii) that the defendant ~~is not~~will likely ~~to~~ commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice~~, and that the appeal is not frivolous or taken for delay~~.	(2) Burden of Proof. If a defendant was sentenced to incarceration, a court must not grant release pending appeal from a judgment of conviction unless the defendant establishes to the court's satisfaction that: (a) the appeal is not frivolous or taken for delay; and (b) no substantial risk exists: (i) that the defendant will fail to appear to answer the judgment following the conclusion of the appellate proceedings; and (ii) that the defendant will likely commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.
(3) Application for Release Pending Appeal. ~~Application for release pending~~	(3) Application for Release Pending Appeal. A defendant must first apply to the

~~appeal shall be made in the first instance~~A defendant must first apply to the district court for release pending appeal ~~to the trial court~~. If the ~~trial~~district court denies~~refuses~~ release pending appeal~~,~~ or imposes conditions of release, the court ~~shall~~must state on the record the reasons for the action taken. ~~Thereafter, if an appeal is~~If the defendant appeals ~~pending,~~ and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, ~~pending review, may be made~~ to the applicable appellate court ~~or a judge thereof~~or to a judge or justice of that court. The motion ~~shall~~must be determined promptly upon such papers, affidavits, and portions of the record as the parties ~~shall~~may present, and after reasonable notice to the ~~prosecuting attorney~~ prosecutor. The appellate court or ~~a judge thereof~~one of its judges or justices may order the defendant's release ~~of the defendant~~ pending the motion's disposition ~~of the motion~~.	district court for release pending appeal. If the district court denies release pending appeal or imposes conditions of release, the court must state on the record the reasons for the action taken. If the defendant appeals and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, to the applicable appellate court or to a judge or justice of that court. The motion must be determined promptly upon such papers, affidavits, and portions of the record as the parties may present, and after reasonable notice to the prosecutor. The appellate court or one of its judges or justices may order the defendant's release pending the motion's disposition.
(4) Credit for Time Spent in Custody. All time the defendant ~~is~~spends in custody pending an appeal ~~shall~~must be ~~automatically~~ deducted from the sentence the district court imposed ~~by the court~~.	(4) Credit for Time Spent in Custody. All time the defendant spends in custody pending an appeal must be deducted from the sentence the district court imposed.
(5) ~~If a defendant convicted of a crime against person is released~~When a defendant obtains release pending appeal ~~pursuant to~~under this rule, the prosecution ~~shall~~must make reasonable good faith efforts as soon as possible to advise the victim ~~as soon as possible~~ of the defendant's release.	(5) When a defendant obtains release pending appeal under this rule, the prosecution must make reasonable good faith efforts as soon as possible to advise the victim of the defendant's release.
Subd. 8. Record on Appeal. The record on appeal ~~shall~~ consists of the papers filed in the ~~trial~~district court, the offered exhibits, and the transcript of the proceedings, if any. ~~Bills of exception and settled cases are abolished.~~ In lieu of the record as defined by this rule, the parties may within 60 days after filing of the notice of appeal prepare, sign, and file with	Subd. 8. Record on Appeal. The record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any. In lieu of the record as defined by this rule, the parties may within 60 days after filing of the notice of appeal prepare, sign, and file with the court administrator a statement of the case

the ~~clerk of trial court~~ court administrator a statement of the case showing how the issues presented by the appeal arose and ~~were decided in the trial court~~ how the district court decided them, stating only the claims and facts essential to a decision. ~~If the statement is accurate, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall~~The district court, after making any additions it considers necessary to present the issues raised by the appeal, may approve the statement, which will then be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, ~~the memorandum relating thereto of the trial court~~ and any relevant district court memorandum of law ~~shall~~ must be included with the record.	showing how the issues presented by the appeal arose and how the district court decided them, stating only the claims and facts essential to a decision. The district court, after making any additions it considers necessary to present the issues raised by the appeal, may approve the statement, which will then be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and any relevant district court memorandum of law must be included with the record.
An appellant who intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without either a statement of the case or transcript, ~~shall~~ must serve notice of intent to do so on respondent and the ~~clerk of the trial court~~ court administrator and also file the notice with the clerk of the appellate courts, all within the time provided for ordering a transcript.	An appellant who intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without either a statement of the case or transcript, must serve notice of intent to do so on respondent and the court administrator and also file the notice with the clerk of the appellate courts, all within the time provided for ordering a transcript.
Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. ~~The Minnesota Rules of Civil Appellate Procedure to~~ To the extent applicable, ~~shall~~ 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 ~~shall~~ must be ordered within 30 days after filing of the notice of appeal and may be extended by the appellate court for good cause ~~shown~~. ~~Any videotape or audiotape exhibits admitted at trial or hearing shall, if not previously transcribed, be transcribed at the request of either the appellant~~	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. 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

~~or the respondent unless the parties have already stipulated to the accuracy of a transcript of such exhibit previously made a part of the record in the trial court. The transcript of any such exhibit then shall be included as part of the record. It shall not be necessary for the court reporter to certify the corrections of any such videotape or audiotape transcript.~~

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 ~~is not to be included, the appellant~~, then within the 30 days~~,~~ permitted to order it, the appellant ~~shall~~ must file with the clerk of the appellate courts and serve on the ~~clerk of the trial court~~court administrator and respondent a description of the parts of the transcript ~~which~~ 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 ~~to be~~ necessary, the respondent ~~shall~~must order from the reporter, within 10 days of service of the description or notification of no transcript, those other parts ~~from the reporter~~ deemed necessary, or serve and file a motion in the ~~trial~~district court for an order requiring the appellant to do so.

Subd. 10. Briefs. The appellant ~~shall~~ must serve and file the appellant's brief ~~and appendix~~ within 60 days after ~~delivery of~~the court reporter delivers the transcript~~, by the reporter~~ or after the filing of the ~~trial~~district court's approval of the statement ~~pursuant to~~ 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.

Subd. 10. Briefs. The appellant must serve and file the appellant's brief within 60 days after the court reporter delivers the transcript, or after the filing of the district court's approval of the statement under subd. 8 of this rule or under Minnesota Rule of Civil

under subd. 8 of this rule or under ~~Rule 110.03 of the~~ Minnesota Rule~~s~~ of Civil Appellate Procedure 110.03. In all other cases, if the parties obtain the transcript ~~is obtained prior to~~before the appeal, or if the record on appeal does not include a transcript, ~~then~~ the appellant ~~shall~~ must serve and file the appellant's brief ~~and appendix with the clerk of the appellate courts~~ within 60 days after the appellant filed ~~filing of~~ the notice of appeal. The respondent ~~shall~~ must serve and file the respondent's brief ~~and appendix, if any,~~ within 45 days after service of the appellant's brief ~~of appellant~~. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, ~~shall govern~~ the form and filing of briefs, ~~and appendices except that~~but the appellant's brief ~~shall~~must contain a ~~statement of the~~ procedural history.	Appellate Procedure 110.03. In all other cases, if the parties obtain the transcript before the appeal, or if the record on appeal does not include a transcript, the appellant must serve and file the appellant's brief within 60 days after the appellant filed the notice of appeal. The respondent must serve and file the respondent's brief within 45 days after service of the appellant's brief. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but the appellant's brief must contain a procedural history.
Subd. 11. Scope of Review. On appeal from a judgment, ~~On appeal from a judgment, the court may review any pretrial or trial order or ruling, whether or not a motion for new trial has been made, and may review the denial of a motion for new trial or to vacate judgment or for judgment of acquittal, whether ruled upon before or after judgment. The~~the court may review any order or ruling of the district court or any other matter, as the interests of justice may require.	Subd. 11. Scope of Review. On appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests of justice may require.
Subd. 12. Action on Appeal. ~~On appeal from a judgment, if~~If the appellate court affirms the judgment, it ~~shall~~must direct execution of the sentence as pronounced by the ~~trial court~~district court or as modified by the appellate court ~~pursuant to~~under Rule 28.05, subd. 2~~, be executed~~. If it reverses the judgment, it ~~shall either~~must: (a) direct a new trial~~, or that the defendant be discharged~~; (b) vacate the conviction and enter a judgment of acquittal; or	Subd. 12. Action on Appeal. If the appellate court affirms the judgment, it must direct execution of the sentence as pronounced by the district court or as modified by the appellate court under Rule 28.05, subd. 2. If it reverses the judgment, it must: (a) direct a new trial; (b) vacate the conviction and enter a judgment of acquittal; or

(c) ~~that the conviction be reduced~~ reduce the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court reduces the conviction, ~~is reduced, the case shall be returned to the court which imposed the sentence~~ it must remand for resentencing.	(c) reduce the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court reduces the conviction, it must remand for resentencing.
Subd. 13. Oral Argument.	Subd. 13. Oral Argument.
(1) ~~Allowance of Oral Argument. There shall be oral~~Oral argument must be held in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it ~~at the time of serving and filing the party's~~when the party serves and files its initial brief, unless:	(1) Oral argument must be held in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it when the party serves and files its initial brief, unless:
1. the respondent forfeits oral argument ~~is forfeited by respondent pursuant to~~ under ~~Rule 128.02 of the~~ Minnesota Rule~~s~~ of Civil Appellate Procedure ~~128.02~~134.01(b) for failure to timely file a brief, and appellant has either waived oral argument or not requested it;	1. the respondent forfeits oral argument under Minnesota Rule of Civil Appellate Procedure 134.01(b) for failure to timely file a brief, and appellant has either waived oral argument or not requested it;
2. the parties waive oral argument ~~is waived by~~ by joint agreement ~~pursuant to~~ under Minnesota Rule of Civil Appellate Procedure ~~Rule~~ 134.06; or	2. the parties waive oral argument by joint agreement under Minnesota Rule of Civil Appellate Procedure 134.06; or
3. the appellate court determines ~~in the exercise of its discretion~~ that oral argument is unnecessary because:	3. the appellate court determines that oral argument is unnecessary because:
a. the dispositive issue or set of issues has been authoritatively settled; or	a. the dispositive issue or set of issues has been authoritatively settled; or
b. the briefs and record adequately present the facts and legal arguments, and the decisional process would not be significantly aided by oral argument.	b. the briefs and record adequately present the facts and legal arguments, and the decisional process would not be significantly aided by oral argument.
The clerk of the appellate court ~~shall~~ must notify the parties when ~~it has been determined that~~ oral argument ~~shall~~ will not be allowed under this provision. Any party so notified may request the court to reconsider its decision by serving on all other parties and filing with the clerk of the appellate courts a written request for reconsideration within 5	The clerk of the appellate court must notify the parties when oral argument will not be allowed under this provision. Any party so notified may request the court to reconsider its decision by serving on all other parties and filing with the clerk of the appellate courts a written request for reconsideration within 5 days of receipt of the notification that no oral argument will be allowed. If, under this

days of receipt of the notification that no oral argument ~~shall~~will be allowed. If, under this provision, the court does not allow oral argument ~~is not allowed~~, the case ~~shall~~must be considered as submitted to the court ~~at the time~~ when the clerk of the appellate courts notifies the parties that oral argument has been denied. The Court of Appeals may direct presentation of oral argument in any case.	provision, the court does not allow oral argument, the case must be considered as submitted to the court when the clerk of the appellate courts notifies the parties that oral argument has been denied. The Court of Appeals may direct presentation of oral argument in any case.
(2) ~~Procedure Upon Oral Argument.~~ Except in exigent circumstances, the oral argument ~~shall~~must be heard ~~before~~ by the full panel ~~to which the case has been~~ assigned to decide the case, and in any event ~~shall~~ must be considered and decided by the full panel. ~~Except as otherwise provided by this rule, the~~The procedure ~~up~~on oral argument, including waiver and forfeiture of oral argument, ~~shall~~ must be as ~~set forth in~~ prescribed by the Minnesota Rules of Civil Appellate Procedure, unless this rule directs otherwise.	(2) Except in exigent circumstances, the oral argument must be heard by the full panel assigned to decide the case, and in any event must be considered and decided by the full panel. The procedure on oral argument, including waiver and forfeiture of oral argument, must be as prescribed by the Minnesota Rules of Civil Appellate Procedure, unless this rule directs otherwise.
Rule 28.03 Certification of Proceedings	**Rule 28.03 Certification of Proceedings**
~~If, upon the trial of any person convicted in any court, or if, upon any motion to dismiss a tab charge, complaint or indictment, or upon any motion relating to the tab charge, complaint, or indictment,~~ In the following circumstances, when any question of law ~~shall~~ arises ~~which~~ that in the district court's opinion ~~of the judge~~ is so important or doubtful ~~as to require a decision of~~ that the Court of Appeals should decide it, and the defendant requests or consents, the judge ~~shall, if the defendant shall request or consent thereto,~~must report the case~~, so far as may be necessary~~ to present the question of law, and certify the report to the Court of Appeals~~, whereupon all proceedings in the case shall be stayed until the decision of the Court of Appeals.~~: (1) at the trial of any person convicted in any court;	In the following circumstances, when any question of law arises that in the district court's opinion is so important or doubtful that the Court of Appeals should decide it, and the defendant requests or consents, the judge must report the case to present the question of law, and certify the report to the Court of Appeals: (1) at the trial of any person convicted in any court;

(2) upon any motion to dismiss a tab charge, complaint, or indictment; or (3) upon any motion relating to the tab charge, complaint, or indictment. Certification stays all proceedings in the district court until the Court of Appeals decides the question presented. The ~~prosecuting attorney~~prosecutor ~~shall~~must, upon certification of the report, ~~forthwith~~promptly furnish a copy to the Minnesota ~~a~~Attorney ~~g~~General at the expense of the governmental unit responsible for the prosecution ~~of the county~~. ~~Other~~The court may stay other criminal cases ~~in such trial court~~it has pending that ~~involving or depending~~involve or depend ~~up~~on the same question~~, may,~~ if the defendant so requests or consents ~~thereto, be stayed in like manner until the decision of the case so certified. Unless otherwise provided by order of the appellate court, the filing and serving of briefs upon certification shall~~ to the stay until the appellate court decides the certified question. Briefs must be filed and served as provided in Rule 28.04, subd. 2(3), unless the appellate court directs otherwise.	(2) upon any motion to dismiss a tab charge, complaint, or indictment; or (3) upon any motion relating to the tab charge, complaint, or indictment. Certification stays all proceedings in the district court until the Court of Appeals decides the question presented. The prosecutor must, upon certification of the report, promptly furnish a copy to the Minnesota Attorney General at the expense of the governmental unit responsible for the prosecution. The district court may stay other criminal cases it has pending that involve or depend on the same question if the defendant so requests or consents to the stay until the appellate court decides the certified question. Briefs must be filed and served as provided in Rule 28.04, subd. 2(3), unless the appellate court directs otherwise.
Rule 28.04 Appeal by ~~Prosecuting Attorney~~Prosecutor Subd. 1. Right of Appeal. The ~~prosecuting attorney~~prosecutor may appeal as of right to the Court of Appeals: (1) in any case, from any pretrial order ~~of the trial court~~, including probable cause dismissal orders based on questions of law. ~~However, an order is not appealable (a) if it is based solely on a factual determination dismissing a complaint for~~ But a pretrial order cannot be appealed if the court dismissed a complaint for lack of probable cause ~~to believe the defendant has committed an offense~~ premised solely on a factual determination, or ~~(b) if it is an order dismissing~~ if the court	**Rule 28.04 Appeal by Prosecutor** Subd. 1. Right of Appeal. The prosecutor may appeal as of right to the Court of Appeals: (1) in any case, from any pretrial order, including probable cause dismissal orders based on questions of law. But a pretrial order cannot be appealed if the court dismissed a complaint for lack of probable cause premised solely on a factual determination, or if the court dismissed a complaint under Minn. Stat. § 631.21;

dismissed a complaint ~~pursuant to~~ under Minn. Stat. § 631.21; ~~and~~	
(2) in felony cases, from any sentence imposed or stayed by the ~~trial~~district court; ~~and~~	(2) in felony cases, from any sentence imposed or stayed by the district court;
(3) in any case, from an order granting postconviction relief under Minn. Stat. ~~Ch.~~ch. 590; ~~and~~	(3) in any case, from an order granting postconviction relief under Minn. Stat. ch. 590;
(4) in any case, from an order staying adjudication of an offense for which the defendant pleaded guilty or was found guilty at a trial. An order for a stay of adjudication to which the ~~prosecuting attorney~~prosecutor did not object is not appealable; ~~and~~	(4) in any case, from an order staying adjudication of an offense for which the defendant pleaded guilty or was found guilty at a trial. An order for a stay of adjudication to which the prosecutor did not object is not appealable;
(5) in any case, from a judgment of acquittal by the ~~trial~~district court entered after the jury returns a verdict of guilty under Rule 26.03, subd. ~~17~~18(2) or (3); ~~and~~	(5) in any case, from a judgment of acquittal by the district court entered after the jury returns a verdict of guilty under Rule 26.03, subd. 18(2) or (3);
(6) in any case, from an order of the ~~trial~~district court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 3~~2~~; ~~and~~	(6) in any case, from an order of the district court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 3;
(7) in any case, from an order for a new trial granted under Rule 26.04, subd. 1, after a verdict or judgment of guilty, if the ~~trial~~district court expressly ~~states therein,~~ stated in its order or in ~~a~~an accompanying memorandum ~~attached thereto,~~ that ~~the~~it based its order ~~is based~~ exclusively ~~up~~on a question of law ~~which~~that, in the opinion of the ~~trial~~district court, is so important or doubtful ~~as to require a decision by~~that the appellate court~~s~~ should decide it. However, an order for a new trial ~~is not appealable~~cannot be appealed if ~~it is~~ based on the interests of justice.	(7) in any case, from an order for a new trial granted under Rule 26.04, subd. 1, after a verdict or judgment of guilty, if the district court expressly stated in its order or in an accompanying memorandum that it based its order exclusively on a question of law that, in the opinion of the district court, is so important or doubtful that the appellate court~~s~~ should decide it. However, an order for a new trial cannot be appealed if based on the interests of justice.
Subd. 2. Procedure Upon Appeal of Pretrial Order. ~~The~~ The procedure upon appeal of a pretrial order by the ~~prosecuting attorney shall be~~prosecutor is as follows:	Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecutor is as follows:
(1) Stay. Upon oral notice that the ~~prosecuting attorney~~prosecutor intends to appeal a pretrial order ~~which shall also include a statement for the record as to how the trial~~	(1) Stay. Upon oral notice that the prosecutor intends to appeal a pretrial order, the district court must stay the proceedings for 5 days to allow time to perfect the appeal. The oral notice must include a

court's alleged error, unless reversed, will have a critical impact on the outcome of the trial, the trialdistrict court shall order a stay of proceeding ofmust stay the proceedings for five (5) days to allow time to perfect the appeal. The oral notice must include a statement for the record explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial.	statement for the record explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial.
(2) Notice of Appeal. The prosecuting attorney shallprosecutor must file with the clerk of the appellate courts: (a) a notice of appeal, a; (b) the statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure 133.03, which shallmust also include a summary statement by the prosecutor as toexplaining how the trialdistrict court's alleged error, unless reversed, will have a critical impact on the outcome of the trial;, and (c) a copy of the written request to the court reporter for sucha transcript of the proceedings as appellant deems necessary. The prosecutor must submit with the notice of appeal, the statement of the case, and request for transcript shall have attached at the time of filing, proof of service of these documents on the defendant or defense counsel, the State Public Defender's office, the attorney general for the State of Minnesota Attorney General, and the court administrator of the trial court in which the pretrial order is entered. Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service, does not deprive the Court of Appeals of jurisdiction over the prosecuting attorney'sprosecutor's appeal, but it is ground only for suchpermits action as the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal shallmust	(2) Notice of Appeal. The prosecutor must file with the clerk of the appellate courts: (a) a notice of appeal; (b) the statement of the case provided for by Minnesota Rule of Civil Appellate Procedure 133.03, which must also include a summary statement by the prosecutor explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial; and (c) a copy of the written request to the court reporter for a transcript of the proceedings as appellant deems necessary. The prosecutor must submit with the notice of appeal, the statement of the case, and request for transcript at the time of filing, proof of service of these documents on the defendant or defense counsel, the State Public Defender's office, the Minnesota Attorney General, and the court administrator. Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service, does not deprive the Court of Appeals of jurisdiction over the prosecutor's appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal must be as set out in Rule 28.02, subd. 4(2).

be as set ~~forth~~out in Rule 28.02, subd. 4(2). (3) Briefs. ~~Within~~ The prosecutor must file the appellant's brief with the clerk of appellate courts, with proof of service on the respondent, within ~~fifteen (~~15~~)~~ days of delivery of the transcript. ~~if~~ If the court reporter delivered the transcript ~~was delivered prior to the filing of~~ before the prosecutor filed the notice of appeal, or if the ~~appellant has~~prosecutor did not request~~ed~~ any transcript under Rule 28.04, subd. 2(2), appellant ~~shall~~must file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent within 15 days after the prosecutor filed the notice of appeal. Within 8 days of service of appellant's brief upon respondent, the respondent ~~shall~~ must file the respondent's brief ~~with said clerk~~ together with proof of service ~~up~~on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure ~~to the extent applicable shall~~ govern the form and filing of briefs and appendices, ~~except that~~but the appellant's brief ~~shall~~ must contain a ~~statement of the~~ procedural history. (4) Dismissal by the Minnesota Attorney General. In appeals by the ~~prosecuting attorney~~prosecutor, the attorney general may, within 20 days after entry of the order staying proceedings, dismiss the appeal, and ~~shall~~ must within 3 days ~~thereafter~~after the dismissal give notice of it ~~thereof~~ to the ~~judge of the lower~~ court administrator and file it with the clerk of the appellate courts ~~notice of such dismissal~~. The ~~lower~~district court ~~shall~~must then proceed as if no appeal had been taken. (5) Oral Argument and Consideration. ~~The provisions of~~ Rule 28.02, subd. 13 concerning oral argument ~~shall apply~~applies to appeals by the ~~prosecuting attorney~~prosecutor, ~~provided that~~but the date of oral argument or submission of the case to the court without oral argument ~~shall not be more than 3 months~~cannot be later than 3 months after all	(3) Briefs. The prosecutor must file the appellant's brief with the clerk of appellate courts, with proof of service on the respondent, within 15 days of delivery of the transcript. If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request any transcript under Rule 28.04, subd. 2(2), appellant must file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent within 15 days after the prosecutor filed the notice of appeal. Within 8 days of service of appellant's brief upon respondent, the respondent must file the respondent's brief together with proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history. (4) Dismissal by the Minnesota Attorney General. In appeals by the prosecutor, the attorney general may, within 20 days after entry of the order staying proceedings, dismiss the appeal, and must within 3 days after the dismissal give notice of it to the court administrator and file it with the clerk of the appellate courts. The district court must then proceed as if no appeal had been taken. (5) Oral Argument and Consideration. Rule 28.02, subd. 13 concerning oral argument applies to appeals by the prosecutor, but the date of oral argument or submission of the case to the court without oral argument cannot be later than 3 months after all briefs have been filed. The Court of Appeals must not hear or accept as submitted any appeals not argued or

briefs have been filed. The Court of Appeals ~~shall~~ must not hear or accept as submitted any ~~such~~ appeals ~~more than 3 months after all briefs have been filed~~not argued or submitted before this period elapsed. ~~and in such cases the lower~~If the case has not been argued or submitted within 3 months, the district court ~~shall then~~must proceed as if no appeal had been taken.	submitted before this period elapsed. If the case has not been argued or submitted within 3 months, the district court must proceed as if no appeal had been taken.
(6) Attorney~~'s~~ Fees. Reasonable attorney~~'s~~ fees and costs incurred ~~shall~~must be allowed to the defendant on such appeal~~, which shall~~ and they must be paid by the governmental unit responsible for the prosecution ~~involved~~.	(6) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on such appeal, and they must be paid by the governmental unit responsible for the prosecution.
(7) Joinder. The ~~prosecuting attorney~~ prosecutor may appeal ~~from one or~~ several of the orders under this rule joined in a single appeal.	(7) Joinder. The prosecutor may appeal several of the orders under this rule joined in a single appeal.
(8) Time for Appeal. The ~~prosecuting attorney~~prosecutor may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and ~~all issues raised therein have been determined by~~ the ~~trial~~district court has decided all issues raised. The appeal then ~~shall~~must be taken within 5 days after the defense, or the court administrator ~~pursuant to~~under Rule 33.03, ~~subsequently~~ serves notice of entry of the order to be appealed from ~~up~~on the ~~prosecuting attorney~~prosecutor, or within 5 days after the ~~prosecuting attorney is notified~~district court notifies the prosecutor in court on the record of ~~such~~the order, whichever occurs first. All pretrial orders entered and noticed to the ~~prosecuting attorney~~prosecutor ~~prior to~~ before the ~~trial~~district court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or in the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal. An appeal by the ~~prosecuting attorney~~ prosecutor under this rule bars any further appeal by the ~~prosecuting attorney~~prosecutor	(8) Time for Appeal. The prosecutor may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and the district court has decided all issues raised. The appeal then must be taken within 5 days after the defense, or the court administrator under Rule 33.03, serves notice of entry of the order to be appealed from on the prosecutor, or within 5 days after the district court notifies the prosecutor in court on the record of the order, whichever occurs first. All pretrial orders entered and noticed to the prosecutor before the district court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or in the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal. An appeal by the prosecutor under this rule bars any further appeal by the prosecutor from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecutor can be taken after jeopardy has attached. An appeal under this rule does not

from any existing orders not included in the appeal. No appeal of a pretrial order by the ~~prosecuting attorney~~prosecutor ~~shall~~can be taken after jeopardy has attached. An appeal under this rule does not deprive the ~~trial~~district court of jurisdiction over pending matters not included in the appeal.	deprive the district court of jurisdiction over pending matters not included in the appeal.
Subd. 3. Cross-Appeal by Defendant. ~~Upon appeal by the prosecuting attorney~~When the prosecutor appeals, the defendant may obtain review of any adverse pretrial or postconviction order ~~which will adversely affect the defendant,~~ by filing a notice of cross-appeal with the clerk of the appellate courts, ~~together~~ with proof of service on the ~~prosecuting attorney~~prosecutor, within 10 days after ~~service of~~the prosecutor serves notice of the appeal~~ by the prosecuting attorney, provided that in~~. In postconviction cases, the notice of cross-appeal may be filed within 60 days after the entry of the order granting or denying postconviction relief, if that is later. Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but ~~is ground only for~~ permits ~~such~~ action ~~as~~ the Court of Appeals deems appropriate, including dismissal of the cross-appeal.	Subd. 3. Cross-Appeal by Defendant. When the prosecutor appeals, the defendant may obtain review of any adverse pretrial or postconviction order by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within 10 days after the prosecutor serves notice of the appeal. In postconviction cases, the notice of cross-appeal may be filed within 60 days after the entry of the order granting or denying postconviction relief, if that is later. Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the cross-appeal.
Subd. 4. Conditions of Release. ~~-~~Upon appeal by the ~~prosecuting attorney~~prosecutor of a pretrial order, Rule 6.02, subds. 1 and 2 govern the conditions for defendant's release ~~pending the appeal shall be governed by Rule 6.02, subds. 1 and 2~~. The court ~~shall~~ must also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.	Subd. 4. Conditions of Release. Upon appeal by the prosecutor of a pretrial order, Rule 6.02, subds. 1 and 2 govern the conditions for defendant's release. The court must also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.
Subd. 5. Proceedings in Forma Pauperis. An indigent defendant ~~wishing~~who wants the services of an attorney in an appeal ~~taken~~ by the ~~prosecuting attorney~~prosecutor	Subd. 5. Proceedings in Forma Pauperis. An indigent defendant who wants the services of an attorney in an appeal by the prosecutor under this rule must proceed under

under this rule ~~shall~~ must proceed under Rule 28.02, subd. 5.	Rule 28.02, subd. 5.
Subd. 6. Procedure Upon Appeal of Postconviction Order.	Subd. 6. Procedure Upon Appeal of Postconviction Order.
(1) Service and Filing. ~~An appeal shall be taken~~ The prosecutor may appeal an order granting postconviction relief by filing a notice of appeal with the clerk of the appellate courts~~, together~~ with proof of service on the opposing counsel, the court administrator, and ~~of the trial court in which the order appealed from is entered, and, when the appellant is not the attorney general, also the attorney general for the State of~~ the Minnesota Attorney General. No fees or bond for costs ~~shall be~~ are required for the appeal.	(1) Service and Filing. The prosecutor may appeal an order granting postconviction relief by filing a notice of appeal with the clerk of the appellate courts, with proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.
~~Unless otherwise ordered by the appellate court, a~~A certified copy of the order appealed ~~from or a~~and the statement of the case ~~as provided for by Rule 133.03 of the~~ in Minnesota Rule~~s~~ of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.	A certified copy of the order appealed and the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise.
Failure of the ~~prosecuting attorney~~ prosecutor to take any ~~other~~ step other than timely filing the notice of appeal does not affect the validity of the appeal, but ~~is ground only for such~~permits action ~~as~~ the Court of Appeals deems appropriate, including dismissal of the appeal.	Failure of the prosecutor 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 of the appeal.
(2) Time for Taking an Appeal. An appeal by the ~~prosecuting attorney~~prosecutor of an order granting postconviction relief ~~shall~~ must be taken within 60 days after entry of the order.	(2) Time for Taking an Appeal. An appeal by the prosecutor of an order granting postconviction relief must be taken within 60 days after entry of the order.
(3) Other Procedures. ~~The provisions of~~The following rules govern the below-listed aspects of prosecution appeals from an order granting postconviction relief under this rule: • Rule 28.02, subd. 4(2)~~,~~: ~~concerning the~~ the contents of the notice of appeal~~,~~; • Rule 28.02, subd. 8~~,~~: ~~concerning~~ the record on appeal~~,~~; • Rule 28.02, subd. 9~~,~~: ~~concerning~~	(3) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order granting postconviction relief under this rule: • Rule 28.02, subd. 4(2): the contents of the notice of appeal; • Rule 28.02, subd. 8: the record on appeal; • Rule 28.02, subd. 9: transcript of the

transcript of the proceedings and transmission of the transcript on record~~,~~; • Rule 28.02, subd. 10~~,~~: ~~concerning~~ briefs~~,~~; • Rule 28.02, subd. 13~~,~~: ~~concerning~~ oral argument~~,~~; • Rule 28.04, subd. 2(4)~~,~~: ~~concerning~~ dismissal by the Minnesota Attorney General~~attorney general,~~; and • Rule 28.04, subd. 2(6)~~,~~: ~~concerning~~ attorney~~'s~~ fees~~, shall apply to appeals by the prosecuting attorney of an order granting postconviction relief~~.	proceedings and transmission of the transcript on record; • Rule 28.02, subd. 10: briefs; • Rule 28.02, subd. 13: oral argument; • Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; and • Rule 28.04, subd. 2(6): attorney fees.
Subd. 7. Procedure Upon Appeal From Order Staying Adjudication.	Subd. 7. Procedure Upon Appeal From Order Staying Adjudication.
(1) Service and Filing. ~~An~~The prosecutor may appeal ~~from~~ an order staying adjudication ~~shall be taken~~ by filing a notice of appeal with the clerk of the appellate courts, ~~together~~ with proof of service on opposing counsel, the court administrator ~~of the trial court in which the order is entered~~, the State Public Defender's office, and ~~when the appellant is not the attorney general, the attorney general of the State of~~the Minnesota Attorney General. The notice ~~shall~~must be accompanied by a copy of a written request to the court reporter for ~~such~~a transcript of the proceedings, as appellant deems necessary. No fees or bond for costs ~~shall be~~are required for the appeal. ~~Unless otherwise ordered by the appellate court, a~~ A certified copy of the order to be appealed ~~from,~~ or ~~a~~ the statement of the case ~~as provided for by Rule 133.03 of the~~ in Minnesota Rule~~s~~ of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise. Failure of the ~~prosecuting attorney~~ prosecutor to take any step other ~~step~~ than timely filing the notice of appeal does not affect the validity of the appeal, but ~~is ground only for such~~permits action ~~as~~ the Court of	(1) Service and Filing. The prosecutor may appeal an order staying adjudication by filing a notice of appeal with the clerk of the appellate courts, with proof of service on opposing counsel, the court administrator, the State Public Defender's office, and the Minnesota Attorney General. The notice must be accompanied by a copy of a written request to the court reporter for a transcript of the proceedings, as appellant deems necessary. No fees or bond for costs are required for the appeal. A certified copy of the order to be appealed or the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise. Failure of the prosecutor 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 of the appeal.

Appeals deems appropriate, including dismissal of the appeal. (2) Time for Taking an Appeal. An appeal by the ~~prosecuting attorney~~prosecutor from an order staying adjudication ~~shall~~must be taken within 10 days after entry of the order. (3) Briefs. The prosecutor must file and serve the appellant's brief and proof of service on the respondent with the clerk of the appellate courts ~~Within~~within 15 days after delivery of the transcript. ~~or if~~If the court reporter delivered the transcript ~~was delivered prior to the filing of~~ before the prosecutor filed the notice of appeal, or if the ~~appellant has~~prosecutor did not request~~ed~~ a transcript, the appellant ~~shall~~must file the appellant's brief and proof of service on the respondent with the clerk of the appellate courts ~~together with proof of service upon the respondent~~ within 15 days after the prosecutor filed the notice of appeal. The brief ~~shall be identified~~must identify itself as a stay of adjudication brief. Within ~~eight~~8 days after service of the appellant's brief, the respondent ~~shall~~must file the respondent's brief ~~with the clerk together with~~and proof of service ~~up~~on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure ~~to the extent applicable shall~~ govern the form and filing of briefs and appendices, ~~except that~~ but the appellant's brief ~~shall~~must contain a ~~statement of the~~ procedural history. (4) Other Procedures. ~~The provisions of~~The following rules govern the below-listed aspects of prosecution appeals ~~by the prosecutor~~ from an order staying adjudication: • 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. 7~~,~~: ~~concerning~~ release of the defendant pending appeal~~,~~; • Rule 28.02, subd. 8~~,~~: ~~concerning~~ the record on appeal~~,~~; and	(2) Time for Taking an Appeal. An appeal by the prosecutor from an order staying adjudication must be taken within 10 days after entry of the order. (3) Briefs. The prosecutor must file and serve the appellant's brief and proof of service on the respondent with the clerk of the appellate courts within 15 days after delivery of the transcript. If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request a transcript, the appellant must file the appellant's brief and proof of service on the respondent with the clerk of the appellate courts together within 15 days after the prosecutor filed the notice of appeal. The brief must identify itself as a stay of adjudication brief. Within 8 days after service of the appellant's brief, the respondent must file the respondent's brief and proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history. (4) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order staying adjudication: • Rule 28.02, subd. 4(2): the contents of the notice of appeal; • Rule 28.02, subd. 5: proceedings in forma pauperis; • Rule 28.02, subd. 7: release of the defendant pending appeal; • Rule 28.02, subd. 8: the record on appeal; and • Rule 28.02, subd. 13: oral argument.

• Rule 28.02, subd. 13:, ~~concerning~~ oral argument~~, shall apply to appeals by the prosecuting attorney from an order staying adjudication~~.	
Subd. 8. Procedure Upon Appeal From Judgment of Acquittal or Vacation of Judgment After a Jury Verdict of Guilty, or From an Order Granting a New Trial.	Subd. 8. Procedure Upon Appeal From Judgment of Acquittal or Vacation of Judgment After a Jury Verdict of Guilty, or From an Order Granting a New Trial.
(1) Service and Filing. ~~An appeal shall be taken~~The prosecutor may appeal these judgments or orders by filing with the clerk of the appellate courts a notice of appeal ~~with the clerk of the appellate courts together with~~and proof of service on the opposing counsel, the court administrator, ~~of the trial court in which the judgment or order appealed from is entered,~~ and~~, when the appellant is not the attorney general, also the attorney general for the State of~~ the Minnesota Attorney General. No fees or bond for costs ~~shall be~~are required for the appeal. ~~Unless otherwise ordered by the appellate court, a~~A certified copy of the judgment or order appealed ~~from or a~~and the statement of the case ~~as provided for by Rule 133.03 of the~~in Minnesota Rule~~s~~ of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise. Failure of the ~~prosecuting attorney~~ prosecutor to take any step other ~~step~~ than timely filing the notice of appeal does not affect the validity of the appeal, but ~~is ground only for such~~permits action ~~as~~ the Court of Appeals deems appropriate, including dismissal of the appeal.	(1) Service and Filing. The prosecutor may appeal these judgments or orders by filing with the clerk of the appellate courts a notice of appeal and proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal. A certified copy of the judgment or order appealed and the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03 need not be filed, unless the appellate court directs otherwise. Failure of the prosecutor 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 of the appeal.
(2) Time for ~~Taking an~~ Appeal. An appeal by the ~~prosecuting attorney~~prosecutor under this subdivision ~~from either a judgment of acquittal after a jury verdict of guilty, or an order vacating judgment and dismissing the case after a jury verdict of guilty, or an order granting a new trial, shall~~must be ~~taken~~made within 10 days after entry of the judgment or order.	(2) Time for Appeal. An appeal by the prosecutor under this subdivision must be made within 10 days after entry of the judgment or order.

(3) Stay and Conditions of Release. Upon oral notice that the ~~prosecuting attorney~~ prosecutor intends to appeal under this subdivision, ~~from a judgment of acquittal after a jury verdict of guilty or from an order vacating judgment and dismissing the case after a jury verdict of guilty, or from an order granting a new trial,~~ the ~~trial~~district court ~~shall~~ must order ~~a stay of~~execution of the judgment or order ~~of~~ stayed for ~~ten (~~10~~)~~ days to allow time to perfect the appeal. The ~~trial~~district court ~~shall~~must also determine the conditions for defendant's release pending the appeal, which ~~conditions shall be~~are governed by Rule 6.02, subds. 1 and 2.	(3) Stay and Conditions of Release. Upon oral notice that the prosecutor intends to appeal under this subdivision, the district court must order execution of the judgment or order stayed for 10 days to allow time to perfect the appeal. The district court must also determine the conditions for defendant's release pending the appeal, which are governed by Rule 6.02, subds. 1 and 2.
(4) Other Procedures. ~~The provisions of~~The following rules govern the below-listed aspects of appeals by the prosecutor under this subdivision:~~:~~ • Rule 28.02, subd. 4(2)~~,~~: ~~concerning~~ the contents of the notice of appeal~~,~~; • Rule 28.02, subd. 8~~,~~: ~~concerning~~ the record on appeal~~,~~; • Rule 28.02, subd. 9~~,~~: ~~concerning~~ transcript of the proceedings and transmission of the transcript and record~~,~~; • Rule 28.02, subd. 10~~,~~: ~~concerning~~ briefs~~,~~; • Rule 28.02, subd. 13~~,~~: ~~concerning~~ oral argument~~,~~; • Rule 28.04, subd. 2(4)~~,~~: ~~concerning~~ dismissal by the Minnesota Attorney General~~attorney general,~~; and • Rule 28.04, subd. 2(6)~~,~~: ~~concerning~~ attorney~~'s~~ fees~~, shall apply to appeals by the prosecuting attorney from either a judgment of acquittal after a jury verdict of guilty or an order vacating judgment and dismissing the case after a jury verdict of guilty, or an order granting a new trial~~.	(4) Other Procedures. The following rules govern the below-listed aspects of appeals by the prosecutor under this subdivision: • Rule 28.02, subd. 4(2): the contents of the notice of appeal; • Rule 28.02, subd. 8: the record on appeal; • Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript and record; • Rule 28.02, subd. 10: briefs; • Rule 28.02, subd. 13: oral argument; • Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; and • Rule 28.04, subd. 2(6): attorney fees.
(5) Cross-Appeals. ~~Upon appeal by the prosecuting attorney~~When the prosecutor appeals under this subdivision, the defendant	(5) Cross-Appeals. When the prosecutor appeals under this subdivision, the defendant may obtain review of any adverse

may obtain review of any adverse pretrial and trial orders and issues~~,~~ by filing a notice of cross-appeal with the clerk of the appellate courts, ~~together~~ with proof of service on the ~~prosecuting attorney~~prosecutor, within 30 days of the prosecutor filing notice of appeal, or within 10 days after delivery of the transcript by the reporter, whichever is later.

If the defendant makes this election, ~~is made~~ and the jury's verdict is ultimately reinstated, the defendant may not file a second appeal from the entry of judgment of conviction unless it is limited to issues, such as sentencing, that could not have been raised in the cross-appeal.

The defendant may also elect to respond to the issues raised in the prosecutor's appeal and reserve appeal of any other issues until such time as the jury's verdict of guilty is reinstated. If reinstatement occurs, the defendant may appeal from the judgment using the procedures ~~set forth~~ in Rule 28.02, subd. 2.

Rule 28.05 Appeal from Sentence Imposed or Stayed

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

(1) Notice of Appeal and Briefs. Any party appealing a sentence ~~shall~~must file with the clerk of the appellate courts, within 90 days after judgment and sentencing~~,~~:

(a) a notice of appeal; and

(b) an affidavit of service of the notice ~~up~~on opposing counsel, the Minnesota Attorney General~~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's office.

If ~~at the time of filing the notice of appeal~~ all transcripts necessary for the appeal have already been transcribed when the

pretrial and trial orders and issues by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within 30 days of the prosecutor filing notice of appeal, or within 10 days after delivery of the transcript by the reporter, whichever is later.

If the defendant makes this election, and the jury's verdict is ultimately reinstated, the defendant may not file a second appeal from the entry of judgment of conviction unless it is limited to issues, such as sentencing, that could not have been raised in the cross-appeal.

The defendant may also elect to respond to the issues raised in the prosecutor's appeal and reserve appeal of any other issues until such time as the jury's verdict of guilty is reinstated. If reinstatement occurs, the defendant may appeal from the judgment using the procedures in Rule 28.02, subd. 2.

Rule 28.05 Appeal from Sentence Imposed or Stayed

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

(1) Notice of Appeal and Briefs. Any party appealing a sentence must file with the clerk of the appellate courts, within 90 days after judgment and sentencing:

(a) a notice of appeal; and

(b) an affidavit of service of the notice on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals the State Public Defender's office.

If all transcripts necessary for the appeal have already been transcribed when the appellant files the notice of appeal, the party appealing the sentence must file with the notice of appeal 9 copies of an informal letter

appellant files the notice of appeal, the party appealing the sentence ~~shall~~must file with the notice of appeal 9 copies of an informal letter brief, which ~~shall be identified~~must identify itself as a sentencing appeal brief, ~~setting forth the arguments concerning the illegality or inappropriateness of the sentence along~~ with an affidavit of service ~~of the brief up~~on opposing counsel, the Minnesota Attorney General~~attorney general~~, and in the case of prosecution appeals~~,~~ the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence. ~~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~~When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts~~, along with~~and an affidavit of service of the request ~~up~~on opposing counsel, the Minnesota Attorney General~~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's office. Appellant's brief ~~shall~~must be identified as a sentencing appeal brief and ~~shall~~must be served and filed within 30 days ~~of the~~after delivery of the transcript. The clerk of the appellate courts ~~shall~~must 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~~may combine the two ~~appeals~~ into a single appeal; when this option is selected, the procedures ~~established by~~in Rule 28.02 ~~of these rules shall~~ continue to apply. (2) Transmission of Record. Upon receiving a copy of the notice of appeal, ~~the~~	brief, which must identify itself as a sentencing appeal brief, with an affidavit of service on opposing counsel, the Minnesota Attorney General, and in the case of prosecution appeals the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence. When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts, and an affidavit of service of the request on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals, the State Public Defender's office. Appellant's brief must be identified as a sentencing appeal brief and must be served and filed within 30 days after delivery of the transcript. The clerk of the appellate courts must 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 may combine the two into a single appeal; when this option is selected, the procedures in Rule 28.02 continue to apply. (2) Transmission of Record. Upon receiving a copy of the notice of appeal, the

~~court administrator for the trial court~~the court administrator ~~shall~~must immediately forward to the clerk of the appellate courts~~:~~:

(a) a transcript of the sentencing hearing, if any~~,~~;

(b) the sentencing order with the departure report, if any, attached~~,~~;

(c) the sentencing guidelines worksheet~~,~~; and

(d) any presentence investigation report.

court administrator must immediately forward to the clerk of the appellate courts:

(a) a transcript of the sentencing hearing, if any;

(b) the sentencing order 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 ~~up~~on respondent of appellant's brief, a respondent choosing to respond ~~shall~~must serve an informal letter brief ~~up~~on appellant~~,~~ and file with the clerk of the appellate courts 9 copies of ~~such~~the brief.

(3) Respondent's Brief. Within 10 days of service on respondent of appellant's brief, a respondent choosing to respond must serve an informal letter brief on appellant and file with the clerk of the appellate courts 9 copies of the brief.

(4) Reply Brief. Appellant may serve and file a reply brief within 5 days after service of the respondent's brief.

(4) Reply Brief. Appellant may serve and file a reply brief within 5 days after service of the respondent's brief.

(45) Other procedures. ~~The provisions of~~The following rules govern the below-listed aspects of sentencing appeals:

- 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.~~

(5) Other procedures. The following rules govern the below-listed aspects of sentencing appeals:

- Rule 28.02, subd. 4(2): the contents of the notice of appeal;
- Rule 28.02, subd. 5: proceedings in forma pauperis;
- Rule 28.02, subd. 6: stays;
- Rule 28.02, subd. 7: release of the defendant on appeal; and
- Rule 28.02, subd. 13: oral argument.

Subd. 2. Action on Appeal. ~~On appeal of a sentence, the~~The appellate court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable,

Subd. 2. Action on Appeal. The appellate court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate,

inappropriate, excessive, unjustifiably disparate, or not warranted by the sentencing court's findings of fact~~ issued by the sentencing court~~. This review ~~shall be~~exists in addition to all other powers of review~~ presently existing~~.

The court may:

(a) dismiss or affirm the appeal~~,~~;

(b) vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence; or

(c) order further proceedings ~~to be had~~ as ~~the court~~it may direct.

Comment—Rule 28

~~*Rule 28 governs the procedure for appeals to the Court of Appeals, Minn. Stat. Ch. 480A (1982), in all petty misdemeanor, misdemeanor, gross misdemeanor, and felony cases except for cases in which the defendant has been convicted of murder in the first degree. Appeals to the Supreme Court in criminal cases are permitted as a matter of right only when a defendant has been convicted of murder in the first degree, Minn. Stat. § 632.14 (1982), and the procedure in such cases is governed by Rule 29. Rule 29 also governs the procedure for seeking further discretionary review in the Supreme Court of any decision by the Court of Appeals. Minn. Stat. § 611A.0395 requires the prosecuting attorney to make a reasonable and good faith effort to notify a victim of any pending appeal, of any hearings or arguments on the appeal, and of the final decision.*~~

~~*The provision of Rule 28.01, subd. 3 for suspension of the rules is taken from Fed.R.App.P. 2 and Minn.R.Civ.App.P. 102. The court, however, may not extend the time for filing a notice of appeal except as provided by Rule 28.02, subd. 4(3).*~~

Under Rule 28.02, subd. 1 the defendant may obtain review of lower court orders and rulings only by appeal except as may be provided in the case of the extraordinary writ authorized by Minn. Const. Art. VI, § 2, and the postconviction remedy, Minn. Stat. Ch. 590. The statutory authorization for the extraordinary writs is contained in Minn. Stat. § 480A.06, subd. 5 and chs. 586 (Mandamus), 589 (Habeas Corpus), and 606 (Certiorari). The procedure for obtaining writs of mandamus or prohibition appears in Minn. R. Civ. App. P. 120 and 121.

A defendant cannot as a matter of right appeal from a stay of adjudication entered under Minn. Stat. § 152.18, subd. 1, which requires the consent of the defendant. However, a defendant may seek discretionary review of such a stay under Rule 28.02, subd. 3. State v. Verschelde, 595 N.W.2d 192 (Minn. 1999).

Rule 28.02, subd. 3 (Discretionary Review) is taken from Minn. R. Civ. App. P. 105, which sets forth the procedure to be followed by a defendant in seeking permission to proceed with an appeal from an order not otherwise appealable. A defendant seeking to appeal from a sentence imposed or stayed in a

defendant may obtain review of lower court orders and rulings only by appeal except as may be provided in the case of the extraordinary writ authorized by Minn. Const. Art. VI, § 2, and the postconviction remedy, Minn. Stat. Ch. 590. The statutory authorization for the extraordinary writs is contained in Minn. Stat. § 480A.06, subd. 5 ~~(1982)~~ and ~~Chapters~~chs. 586 (Mandamus), 589 (Habeas Corpus), and 606 (Certiorari). The procedure for obtaining writs of mandamus or prohibition ~~is contained~~appears in Minn. R. Civ. App. P. 120 and 121.

~~*Under Rule 28.02, subd. 2(1) a defendant may appeal to the Court of Appeals from either a final judgment or an order denying postconviction relief except for cases in which the defendant has been convicted of murder in the first degree. The procedure for the appeal is governed by Rule 28 which supersedes the holding in Bolstad v. State, 439 N.W.2d 50 (Minn.Ct.App.1989) that the procedure in postconviction appeals is governed by the Rules of Civil Appellate Procedure. See Rules 28.04, subd. 1 and 28.04, subd. 6 as to appeal by the prosecuting attorney in postconviction cases. These rules supersede Minn. Stat. § 590.06 (1988) concerning the procedure for an appeal from a postconviction order.*~~

~~*The provisions in Rule 28.02, subd. 2(2) concerning a defendant's right to appeal from an order refusing or imposing conditions of release is taken from Fed.R.App.P. 9(a) and 18 U.S.C. § 3147(b). The remaining provisions of Rule 28.02, subd. 2(1) and (2) are taken substantially from ABA Standards, Criminal Appeals, 21-1.3 (Approved Draft, 1979). Subdivision 2(2)(3) provides defendants with the ability to appeal an order denying a double jeopardy based motion for dismissal after a first trial has ended by mistrial. This provision avoids forcing a defendant to stand trial for a second time for*~~ *misdemeanor or gross misdemeanor case would have to proceed under this rule.*

Rule 28.02, subd. 4(4) establishes a procedure by which a defendant who has initiated a direct appeal may nonetheless pursue postconviction relief. Certain types of claims are better suited to the taking of testimony and fact-finding possible in the district court, and defendants are encouraged to bring such claims, such as ineffective assistance of counsel where explanation of the attorney's decision is necessary, through postconviction proceedings rather than through direct appeal. See Black v. State, 560 N.W.2d 83, 85 n.1 (Minn. 1997). The order staying the appeal may provide for a time limit within which to file the postconviction proceeding.

Under Rule 28.02, subd. 9 (Transcript of Proceedings and Transmission of the Transcript and Record), the transcript must be ordered within 30 days after filing of the notice of appeal rather than within 10 days as otherwise provided by Minn. R. Civ. App. P. 110.02, subd. 1. The provisions of Minn. R. Civ. App. P. 110 and 111 concerning the content and transmission of the record and transcripts apply to criminal appeals under Rule 28. Therefore, it is necessary in a criminal appeal on ordering the transcript to serve and file a Certificate as toTtranscript as required by Minn. R. Civ. App. P. 110.02, subd. 2. If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that party may seek to correct the transcript either by stipulation with the other party or by motion to the district court under Minn. R. Civ. App. P. 110.05.

To the extent that an order granting a defendant a new trial also suppresses evidence, it will be viewed as a pretrial order concerning the retrial and the prosecutor may appeal the

~~the same offense, one of the principle (sic) concerns of double jeopardy protection, State v. McDonald, 298 Minn. 449, 452, 215 N.W.2d 607, 609 (1974), without first permitting appellate review of the double jeopardy issue. Rule 28.02, subd. 2(3) giving a defendant the right to appeal any sentence imposed or stayed in a felony case is based on Minn. Stat. § 244.11 (1982). Under Rule 28.04, subd. 1(2) the prosecuting attorney also has a right to appeal from a sentence imposed or stayed. Under Rule 27.04, subd. 3(5) either the defendant or the prosecuting attorney may also appeal from the court's decision in a probation revocation proceeding.~~ A defendant cannot as a matter of right appeal from a stay of adjudication entered ~~pursuant to~~ under Minn. Stat. § 152.18, subd. 1, which ~~statute~~ requires the consent of the defendant. However, a defendant may seek discretionary review of~~appeal from~~ such a stay under Rule 28.02, subd. 3. State v. Verschelde, 595 N.W.2d 192 (Minn. 1999).

Rule 28.02, subd. 3 (Discretionary Review~~Appeal~~) is taken from Minn. R. Civ. App. P. 105, which sets forth the procedure to be followed by a defendant in seeking permission to proceed with an appeal from an order not otherwise appealable. A defendant seeking to appeal from a sentence imposed or stayed in a misdemeanor or gross misdemeanor case would have to proceed under this rule.

~~Under Rule 28.02, subd. 4 (Procedure for Appeals Other Than Sentencing Appeals) the method for perfecting an appeal to the Court of Appeals is similar to that provided in Minn.R.Civ.App.P. 103.01 except that it is not necessary to file a certified copy of the judgment or order appealed from, a statement of the case, or a bond. Timely filing of the notice with the clerk of the appellate courts is the jurisdictional prerequisite for the appeal. However, failure to take the other actions~~ suppression part of the order under Rule 28.04, subd. 1(1). State v. Brown, 317 N.W.2d 714 (Minn. 1982). In response to State v. Lee, 706 N.W.2d 491 (Minn. 2005), Rule 28.04, subd. 1(4), was revised to expressly permit a prosecutor to appeal a stay of adjudication ordered by the district court over the objection of the prosecutor.

A timely, good-faith motion by the prosecutor for clarification or rehearing of an appealable order extends the time to appeal from that order. State v. Wollan, 303 N.W.2d 253 (Minn.1981). Originally under Rules 28.04, subd. 2(2) and (8) the prosecutor had five days from entry of an appealable pretrial order to perfect the appeal. It was possible for this short time limit to expire before the prosecutor received actual notice of the order sought to be appealed. These rules as revised eliminate this unfairness and assure that notice of the pretrial order will be served on or given to the prosecutor before the five-day time limit begins to run. In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the court held that in computing the five-day time period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays are excluded under Rule 34.01 before the additional 3 days for service by mail are added under Rule 34.04.

Under Rule 28.04, subd. 2(2), 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).

Absent special circumstances, failure of the prosecutor to file the appellant's brief within the 15 days as provided by Rule 28.04, subd. 2(3) will result in dismissal of the appeal. State v. Schroeder, 292 N.W.2d 758 (Minn.1980).

~~*required by the rule could result in dismissal of the appeal or some lesser sanction as the Court of Appeals deems appropriate.*~~ ~~*Under Rule 28.02, subd. 4(3) (Time for Taking an Appeal) a timely motion for a new trial (Rule 26.04, subd. 1(3)), a motion for judgment of acquittal (Rule 26.03, subd. 17(3)), or motion to vacate judgment (Rule 26.04, subd. 2) delays the start of the time period for taking an appeal from the judgment until entry of the order denying the motion. The provisions for extension of time for taking an appeal are based on Fed.R.App.P. 4(b).*~~ *Rule 28.02, subd. 4(4) establishes a procedure by which a defendant who has initiated a direct appeal may nonetheless pursue postconviction relief. Certain types of claims are better suited to the taking of testimony and fact-finding possible in the district court, and* ~~*defedants*~~*defendants are encouraged to bring such claims, such as ineffective assistance of counsel where explanation of the attorney's decision is necessary, through postconviction proceedings rather than through direct appeal. See Black v. State, 560 N.W.2d 83, 85 n.1 (Minn. 1997). The order staying the appeal may provide for a time limit within which to file the postconviction proceeding.* ~~*Rule 28.02, subd. 5 (Proceedings in Forma Pauperis) sets forth the procedures for an indigent defendant to follow to obtain the assistance of the State Public Defender with an appeal or postconviction proceeding. See Minn. Stat. § 611.25 (1982) as to the powers and duties of the State Public Defender.*~~ ~~*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*~~	*Rule 28.05, subd. 2 (Action on Appeal) is taken from Minn. Stat. § 244.11.*

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 don 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 Minnesota Statutes, section 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.*~~ ~~*Rule 28.02, subd. 7(1), (2), and (3) (Release of Defendant, Burden of Proof, and Application for Release Pending Appeal) are adapted from ABA Standards, Criminal Appeals, 21-2.5(a) and (b) (Approved Draft, 1979), Fed.R.App.P. 9(b) and (c), and 18 U.S.C. § 3148.*~~ ~~*Rule 28.02, subd. 8 (Record on Appeal) is based on Minn.R.Civ.App.P. 110.01 and 110.04.*~~ *Under Rule 28.02, subd. 9 (Transcript of Proceedings and Transmission of the Transcript and Record), the transcript must be ordered within 30 days after filing of the notice of appeal rather than within 10 days as otherwise provided by Minn. R. Civ. App. P. 110.02, subd. 1. The ~~other~~ provisions of Minn.*	

*R. Civ. App. P.~~Minn.R.Civ.App.P.~~ 110 and 111 concerning the content and transmission of the record and transcripts apply to criminal appeals under Rule 28. Therefore, ~~I~~it is ~~therefore~~ necessary in a criminal appeal ~~up~~on ordering the transcript to serve and file a Certificate as to Transcript as required by Minn. R. Civ. App. P.~~Minn.R.Civ.App.P.~~ 110.02, subd. 2. ~~If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the trial court record, that 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. The exhibit then must be transcribed, but the court reporter need not certify the correctness of the exhibit transcript as is otherwise required for the remainder of the transcript under Rule 110.02, subd. 4 of the Rules of Civil Appellate Procedure. This exception is made because of the difficulties often encountered in preparing such a transcript.~~ If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that party may seek to correct the transcript either by stipulation with the other party or by motion to the ~~trial~~district court under Minn. R. Civ. App. P. ~~Rule~~ 110.05 ~~of the Rules of Civil Appellate Procedure~~. ~~Rule 28.02, subd. 10 (Briefs) establishes time limits for serving and filing briefs in criminal cases different from that provided by Minn.R.Civ.App.P. 131.01 for civil cases. Also, the appellant's initial brief in a criminal case, unlike in a civil case, must contain a statement of the procedural history. Otherwise, the provisions of Minn.R.Civ.App.P. 128, 129, 130, 131, and 132 concerning the form and filing of briefs govern in the appeal of a criminal case.~~ ~~Rule 28.02, subd. 11 (Scope of Review)~~	

~~*is adapted from Minn.R.Civ.App.P. 103.04 except that on appeal from the final judgment it permits review of pretrial and trial orders or rulings whether or not a motion for new trial has been made, and timely post-trial motions may be reviewed whether ruled upon before or after judgment.*~~ ~~*A party appealing to the Court of Appeals does not automatically receive oral argument. Rather, Rule 28.02, subd. 13(1) (Right to Oral Argument) requires a party desiring oral argument to serve and file with the initial brief a written request for the argument. If oral argument is requested, it shall be granted unless one of the three grounds set forth in the rule exists. The first two grounds of waiver and forfeiture are taken from Minn.R.Civ.App.P. 134.01. The final ground permitting denial of oral argument is based on Minn.R.Civ.App.P. 134.01 and Rule 10(d) of the Eighth Circuit Rules of Appellate Procedure.*~~ ~~*Pursuant to Minn. Stat. § 480A.08, subd. 3, the Court of Appeals shall decide every case within 90 days after oral argument or final submission of briefs, whichever is later. If oral argument is denied under Rule 28.02, subd. 13(1)3 the case shall be considered as submitted to the court at the time the clerk so notifies the parties. If oral argument is not held because it was not requested by the parties or was waived or forfeited by them, then the date upon which the case is considered submitted to the court is determined under Minn.R.Civ.App.P. 134.06. Under Minn.R.Civ.App.P. 134.06 waiver of oral argument requires the consent of the court as well as the agreement of the parties.*~~ ~~*Rule 28.03 (Certification of Proceedings) is based upon former Minn. Stat.§ 632.10 which was repealed in 1979.*~~ ~~*Rule 28.04 (Appeal by Prosecuting*~~	

~~*Attorney) sets forth the right and the procedure for the prosecuting attorney to appeal to the Court of Appeals. Rule 28.04, subd. 1(1) makes it clear that under case law decided since the original adoption of the rules prosecutors may appeal from dismissals for lack of probable cause if such orders are based on questions of law. See, e.g., State v. Aarsvold, 376 N.W.2d 518 (Minn. App. 1985), rev. denied (Minn. Dec. 30, 1985); State v. Kiminski, 474 N.W.2d 385, 388-89 (Minn. App. 1991), rev. denied (Minn. Oct. 11, 1991); and State v. Lores, 512 N.W.2d 618, 620 (Minn. App. 1994), rev. denied (Minn. April 28, 1994). The right of the prosecuting attorney under Rule 28.04, subd. 1(2) to appeal from a sentence imposed or stayed in a felony is based on Minn. Stat. § 244.11 (1982). The procedure for such sentencing appeal is set forth in Rule 28.05. The prosecutor's right to appeal from a trial court's judgment of acquittal after a jury returns a verdict of guilty, or from a trial court's order vacating judgment and dismissing the case after a jury returns a verdict of guilty, does not offend the constitutional protection against double jeopardy because a reversal of the trial court's order on appeal would merely reinstate the jury's verdict and would not subject the defendant to another trial, United States v. Wilson, 420 U.S. 332, 344-45, 95 S.Ct. 1013, 1022-23(1975). The defendant may elect to appeal any orders or issues arising in the course of the criminal process by filing a cross-appeal.*~~

To the extent that an order granting a defendant a new trial also suppresses evidence, it will be viewed as a pretrial order concerning the retrial and the ~~prosecuting attorney~~prosecutor may appeal the suppression part of the order under Rule 28.04, subd. 1(1). State v. Brown, 317 N.W.2d 714 (Minn. 1982). In response to State v. Lee, 706 N.W.2d 491 (Minn. 2005), Rule 28.04, subd. 1(4), was revised to expressly permit a

~~prosecuting attorney~~prosecutor to appeal a stay of adjudication ordered by the district court over the objection of the ~~prosecuting attorney~~prosecutor. *A timely, good-faith motion by the ~~Prior to that revision, such appeals were permitted by construing the appeal in misdemeanor and gross misdemeanor cases as an appeal from a pretrial order under part (1) and in felony cases as an appeal from a sentence under part (2). See State v. Hoelzel, 639 N.W.2d 605 (Minn. 2002); State v. Verschelde, 595 N.W.2d 192 (Minn. 1999); State v. Thoma, 571 N.W.2d 773 (Minn. 1997), aff'g 569 N.W.2d 205 (Minn. App. 1997); and State v. Wright, 699 N.W.2d 782 (Minn. App. 2005). A good faith timely motion by the prosecuting attorney~~prosecutor for clarification or rehearing of an appealable order extends the time to appeal from that order. State v. Wollan, 303 N.W.2d 253 (Minn.1981). Originally under Rules 28.04, subd. 2(2) and (8) the ~~prosecuting attorney~~prosecutor had five days from entry of an appealable pretrial order to perfect the appeal. It was possible for this short time limit to expire before the ~~prosecuting attorney~~prosecutor received actual notice of the order sought to be appealed. These rules as revised eliminate this unfairness and assure that notice of the pretrial order will be served on or given to the ~~prosecuting attorney~~prosecutor before the five-day time limit begins to run. In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the court held that in computing the five-day time period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays ~~shall be~~are excluded ~~pursuant to~~ under Rule 34.01 before the additional ~~three~~3 days for service by mail ~~is~~are added ~~pursuant to~~ under Rule 34.04. *Under Rule 28.04, subd. 2(2), 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).

*~~Generally, a~~Absent special circumstances, failure of the ~~prosecuting attorney~~prosecutor to file the appellant's brief within the 15 days as provided by Rule 28.04, subd. 2(3) will result in dismissal of the appeal. State v. Schroeder, 292 N.W.2d 758 (Minn.1980)~~; State v. Olson, 294 N.W.2d 320 (Minn.1980); State v. Weber, 313 N.W.2d 387 (Minn.1981). CRITICAL IMPACT REQUIREMENT. Although the prosecutor need no longer submit with the notice of appeal the statement formerly required by Minn. Stat. § 632.12, Tthe prosecutor is required by the court's decisions in State v. Webber, 262 N.W.2d 157 (Minn.1977)), State v. Helenbolt, 280 N.W.2d 631 (Minn.1979), and State v. Fisher, 304 N.W.2d 33 (Minn.1981) to show on appeal that the trial court clearly and unequivocally erred and that, unless reversed, the error will have a critical impact on the outcome of the trial. The rule requires prosecutors to articulate their position on critical impact both in the oral notice to the trial court of intent to appeal (under Rule 28.04, subd. 2(1)), and in the statement of the case to the Court of Appeals (under Rule 28.04, subd. 2(2)).~~

~~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. Ffailure 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).~~

~~Rule 28.04, subd. 6, which establishes the procedure for an appeal by the prosecuting attorney from an adverse order in a~~

~~*postconviction case, supersedes the holding in Bolstad v. State, 439 N.W.2d 50 (Minn.Ct.App. 1989) that the procedure in such cases is governed by the Rules of Civil Appellate Procedure. The 60 day time limit for taking such an appeal is the same as was provided by Minn. Stat. § 590.06 which is now superseded by these rules.*~~ ~~Rule 28.05 (Appeal from Sentence Imposed or Stayed) is taken from the order of the Minnesota Supreme Court dated February 28, 1980. These appeal procedures are necessary because Minn. Stat. § 244.11 (1982) now authorizes both the defendant and the prosecution to appeal from any sentence imposed or stayed by the court for felony offenses occurring on or after May 1, 1980. Permitting the state to appeal a sentence does not violate the constitutional protection against double jeopardy. United States v. DiFrancesco, 449 U.S. 117, 101 S.Ct. 426, 66 L.Ed.2d 328 (1980).~~ ~~Under Rule 28.05, subd. 1(1) a defendant may combine an appeal of the sentence with an appeal of the judgment of conviction. If the defendant later determines not to challenge the conviction, the sentence alone may still be challenged on the appeal and the more formal procedural requirements of Rule 28.02 then apply rather than that of Rule 28.05.~~ ~~Rule 28.05, subd. 2 (Action on Appeal) is taken from Minn. Stat. § 244.11 (1982).~~	

Proposed Revisions to Minn. R. Crim. P. 29

Original Language Showing Markup	Proposed Revised Language
Rule 29. Appeals to Supreme Court	**Rule 29. Appeals to Supreme Court**
Rule 29.01 Scope of Rule	**Rule 29.01 Scope of Rule**
Subd. 1. Appeals from Court of Appeals and in First-~~-~~Degree Murder Cases. Rule 29 governs the procedure in misdemeanor, gross misdemeanor, and felony cases for appeals from the Court of Appeals to the Supreme Court and from the district court to the Supreme Court ~~in cases in which~~ if the defendant has been convicted of first-degree murder ~~in the first degree~~.	Subd. 1. Appeals from Court of Appeals and in First-Degree Murder Cases. Rule 29 governs the procedure in misdemeanor, gross misdemeanor, and felony cases for appeals from the Court of Appeals to the Supreme Court and from the district court to the Supreme Court if the defendant has been convicted of first-degree murder.
Subd. 2. Applicability of Rules of Civil Appellate Procedure. ~~Except as otherwise provided in these rules,~~To the extent applicable, the Minnesota Rules of Civil Appellate Procedure ~~to the extent applicable shall~~ govern appellate procedure ~~in such cases~~ unless these rules direct otherwise.	Subd. 2. Applicability of Rules of Civil Appellate Procedure. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise.
Subd. 3. Suspension of Rules. ~~In the interest of expediting decision, or for other~~For good cause ~~shown~~, the Supreme Court may suspend ~~the requirements or provisions~~ application of any of these rules ~~in a particular case on application of any party or on its own motion~~on a party's motion or on its own initiative, and may order proceedings ~~in accordance with its direction~~as it directs, but ~~the Supreme Court may not~~cannot alter the time for filing a notice of appeal or ~~filing~~ a petition for review, ~~except as provided~~unless permitted by ~~these rules~~Rules 29.03, subd. 3(f) or 29.04, subd. 2.	Subd. 3. Suspension of Rules. For good cause, the Supreme Court may suspend application of any of these rules on a party's motion or on its own initiative, and may order proceedings as it directs, but cannot alter the time for filing a notice of appeal or a petition for review, unless permitted by Rules 29.03, subd. 3(f) or 29.04, subd. 2.
Rule 29.02 Right of Appeal	**Rule 29.02 Right of Appeal**
Subd. 1. Appeals in First-~~-~~Degree Murder Cases.	Subd. 1. Appeals in First-Degree Murder Cases.

(a) A defendant may appeal as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder ~~in the first degree~~.	(a) A defendant may appeal as of right from the district court to the Supreme Court from a final judgment of conviction of first-degree murder.
(b) Either the defendant or the ~~prosecuting attorney~~prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from an adverse final order ~~upon~~deciding a petition for postconviction relief under Minn. Stat. ~~Ch~~ch. 590.	(b) Either the defendant or the prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from an adverse final order deciding a petition for postconviction relief under Minn. Stat. ch. 590.
(c) The ~~prosecuting attorney~~ prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from:	(c) The prosecutor may appeal as of right from the district court to the Supreme Court, in a first-degree murder case, from:
(i) ~~either~~ a judgment of acquittal after a jury verdict of guilty of first-degree murder; ~~or~~	(i) a judgment of acquittal after a jury verdict of guilty of first-degree murder;
(ii) an order vacating judgment and dismissing the case after a jury verdict of guilty of first-degree murder; or	(ii) an order vacating judgment and dismissing the case after a jury verdict of guilty of first-degree murder; or
(iii) ~~from~~ an order granting a new trial under Rule 26.04, subd. 1, after a verdict or judgment of guilty of first-degree murder, if the ~~trial~~district court expressly states ~~therein~~in the order, or in ~~a~~an accompanying memorandum ~~attached thereto~~, that the order is based exclusively ~~up~~on a question of law ~~which~~that ~~in~~ the district court concludes ~~opinion of the trial court~~ is so important or doubtful ~~as to~~that it requires a decision by the appellate courts.~~,~~ ~~except that an~~An order for a new trial is not appealable if ~~it is~~ based on the interests of justice.	(iii) an order granting a new trial under Rule 26.04, subd. 1, after a verdict or judgment of guilty of first-degree murder, if the district court expressly states in the order, or in an accompanying memorandum, that the order is based exclusively on a question of law that the district court concludes is so important or doubtful that it requires a decision by the appellate courts. An order for a new trial is not appealable if based on the interests of justice.
(d) ~~Upon the appeal other~~Other charges ~~which~~that were joined for prosecution with the first-degree murder charge may be included in the appeal. ~~Except as otherwise provided in Rule 118 of the Rules of Civil Appellate Procedure for accelerated review by the Supreme Court of cases pending in the Court of Appeals , there shall be no~~No other direct appeals can be taken from the district court to the Supreme Court except as provided in Minnesota Rule of Civil Appellate Procedure 118 (accelerated review by the Supreme Court of cases pending in the Court of Appeals).	(d) Other charges that were joined for prosecution with the first-degree murder charge may be included in the appeal. No other direct appeals can be taken from the district court to the Supreme Court except as provided in Minnesota Rule of Civil Appellate Procedure 118 (accelerated review by the Supreme Court of cases pending in the Court of Appeals).

of cases pending in the Court of Appeals).	
Subd. 2. Appeals from Court of Appeals. A party may appeal from a final decision of the Court of Appeals to the Supreme Court only with leave of the Supreme Court.	Subd. 2. Appeals from Court of Appeals. A party may appeal from a final decision of the Court of Appeals to the Supreme Court only with leave of the Supreme Court.
Rule 29.03 Procedure for Appeals by Defendant in First- Degree Murder Cases	**Rule 29.03 Procedure for Appeals by Defendant in First-Degree Murder Cases**
Subd. 1. Service and Filing. ~~An appeal shall be taken~~A defendant appeals by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts, ~~together~~ with proof of service on the ~~prosecuting attorney~~ prosecutor, the Minnesota Attorney General ~~attorney general for the State of Minnesota~~, and the ~~clerk of the trial~~ court administrator for the county in which the judgment appealed from is entered. ~~A bond shall not be required of a defendant for exercising the right to appeal.~~ The defendant does not have to post a bond to appeal. ~~Unless otherwise ordered by the Supreme Court,~~The defendant need not file a certified copy of the judgment or order appealed from, or ~~a~~ the statement of the case ~~as provided for by Rule 133.03 of the~~ in Minnesota Rule~~s~~ of Civil Appellate Procedure 133.03. The defendant's ~~F~~failure ~~of the defendant~~ to take any step other ~~step~~ than timely filing the notice of appeal does not affect the validity of the appeal, but ~~is ground only for such~~permits action ~~as~~ the Supreme Court deems ~~necessary~~appropriate, including dismissal of the appeal.	Subd. 1. Service and Filing. A defendant appeals by filing a notice of appeal to the Supreme Court 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 judgment appealed from is entered. The defendant does not have to post a bond to appeal. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case in Minnesota Rule of Civil Appellate Procedure 133.03. 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 Supreme Court deems appropriate, including dismissal of the appeal.
Subd. 2. Contents of Notice of Appeal. The notice of appeal ~~shall~~must specify: (a) the ~~defendant~~party or parties ~~taking~~filing the appeal; (b) ~~shall give~~ the names, addresses, and telephone numbers of all counsel and ~~indicate~~ whom they represent; (c) ~~shall designate~~ the judgment or order from which appeal is taken; ~~-~~and	Subd. 2. Contents of Notice of Appeal. The notice of appeal must specify: (a) the party or parties filing the appeal; (b) the names, addresses, and telephone numbers of all counsel and whom they represent; (c) the judgment or order from which appeal is taken; and

(d) ~~shall state~~ that the appeal is to the Supreme Court.	(d) that the appeal is to the Supreme Court.
Subd. 3. Time for Taking an Appeal.	Subd. 3. Time for Taking an Appeal.
(a) An appeal by a defendant from a final judgment of conviction of first-degree murder ~~in the first degree shall~~must be ~~taken~~filed within 90 days after the final judgment. A judgment ~~shall be considered~~is final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury, or the finding of the court, and sentence is imposed.	(a) An appeal by a defendant from a final judgment of conviction of first-degree murder must be filed within 90 days after the final judgment. A judgment is final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury, or the finding of the court, and sentence is imposed.
(b) A notice of appeal filed after the announcement of a decision~~,~~ or order~~, –~~ but before sentencing or entry of judgment or order – ~~shall~~ must be treated as ~~filed after such sentencing or entry and on the day thereof~~ occurring after these events, but on the same day.	(b) A notice of appeal filed after the announcement of a decision or order – but before sentencing or entry of judgment or order – must be treated as occurring after these events, but on the same day.
(c) ~~If a~~ A timely motion to vacate the judgment, for a judgment of acquittal, or for a new trial ~~has been made,~~tolls the time for an appeal from a final judgment ~~does not begin to run~~ until the entry of an order denying the motion, and the order denying the motion may be reviewed ~~upon~~in an appeal from the final judgment.	(c) A timely motion to vacate the judgment, for a judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in an appeal from the final judgment.
(d) An appeal by a defendant from an adverse final order in a postconviction proceeding in a first~~-~~-degree murder case ~~shall~~ must be ~~taken~~ filed within 60 days after its entry ~~of that order~~.	(d) An appeal by a defendant from an adverse final order in a postconviction proceeding in a first-degree murder case must be filed within 60 days after its entry.
(e) A judgment or order is entered ~~within the meaning of~~under these appellate rules when ~~it is entered upon~~ the court administrator enters it in the record ~~of the clerk of the trial court~~.	(e) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.
(f) For good cause, the ~~trial~~district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion ~~and~~or notice, extend the time for filing a notice of appeal ~~for a~~	(f) For good cause, the district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion or notice, extend the time for filing a notice of appeal up to 30 days

~~period not to exceed~~up to 30 days from the expiration of the time ~~otherwise~~ prescribed ~~herein for appeal~~by these rules.	from the expiration of the time prescribed by these rules.
Subd. 4. Other Procedures. ~~The provisions of~~The following rules govern the below-listed aspects of an appeal in a first-degree murder case: • Rule 28.02, subd. 4(4)~~,~~; ~~concerning~~ stay of appeal for postconviction proceedings~~,~~; • Rule 28.02, subd. 5~~,~~: ~~concerning~~ proceeding~~s~~ in forma pauperis~~,~~; • Rule 28.02, subd. 6~~,~~: ~~concerning~~ stay~~s,~~; • Rule 28.02, subd. 7~~,~~:~~—~~ ~~concerning~~ release of defendant~~,~~; • Rule 28.02, subd. 9~~,~~: ~~concerning the~~ transcript of proceedings and transmission of the transcript and record~~,~~; • Rule 28.02, subd. 10~~,~~: ~~concerning~~ briefs~~,~~; • Rule 28.02, subd. 11~~,~~: ~~concerning the~~ scope of review~~,~~; • Rule 28.02, subd. 12~~,~~: ~~concerning~~ action on appeal~~;~~ and • Rule 29.04, subd. ~~9~~139~~,~~: ~~concerning~~ oral argument ~~shall apply to appeals in first degree murder cases under this rule~~.	Subd. 4. Other Procedures. The following rules govern the below-listed aspects of an appeal in a first-degree murder case: • Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings; • Rule 28.02, subd. 5: proceeding in forma pauperis; • Rule 28.02, subd. 6: stay; • Rule 28.02, subd. 7: release of defendant; • Rule 28.02, subd. 9: transcript of proceedings and transmission of the transcript and record; • Rule 28.02, subd. 10: briefs; • Rule 28.02, subd. 11: scope of review; • Rule 28.02, subd. 12: action on appeal; and • Rule 29.04, subd. 9: oral argument.
Rule 29.04 Procedure for Appeals from Court of Appeals	**Rule 29.04 Procedure for Appeals from Court of Appeals**
Subd. 1. Service and Filing. A party petitioning for review to the Supreme Court from the Court of Appeals ~~shall~~must file ~~four~~ 4 copies of a petition for review with the clerk of the appellate courts~~,~~ ~~together~~ with proof of service on ~~adverse~~opposing counsel and~~, when the petitioning party is not~~ the Minnesota Attorney General ~~attorney general, also proof of service on the attorney general for the State of Minnesota~~. ~~A bond shall not be required of a defendant as a condition of petitioning for review.~~ A defendant does not have to file a	Subd. 1. Service and Filing. A party petitioning for review to the Supreme Court from the Court of Appeals must file 4 copies of a petition for review with the clerk of the appellate courts, with proof of service on opposing counsel and the Minnesota Attorney General. A defendant does not have to file a bond to petition for review. A party's failure to take any step other than timely filing the petition for review does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate,

bond to petition for review. ~~Failure of a party~~A party's failure to take any step other ~~step~~ than timely filing the petition for review does not affect the validity of the appeal, but ~~is ground only for such~~ permits action ~~as~~ the Supreme Court deems appropriate, including dismissal of the appeal.	including dismissal of the appeal.
Subd. 2. Time for Petitioning. A party petitioning for review to the Supreme Court from the Court of Appeals ~~shall~~must serve and file the petition for review within 30 days after the ~~filing of the~~ Court of Appeals~~'~~ files its decision.	Subd. 2. Time for Petitioning. A party petitioning for review to the Supreme Court from the Court of Appeals must serve and file the petition for review within 30 days after the Court of Appeals files its decision.
For good cause, ~~A~~a judge of the Court of Appeals or a justice of the Supreme Court may ~~for good cause~~, before or after the time to ~~file and serve~~ serve and file a petition for review has expired, with or without motion or notice, extend the time ~~for serving and filing such a petition for a period not to exceed~~to do so up to 30 days from the expiration of the time ~~otherwise prescribed herein for that purpose~~prescribed by these rules.	For good cause, a judge of the Court of Appeals or a justice of the Supreme Court may, before or after the time to serve and file a petition for review has expired, with or without motion or notice, extend the time to do so up to 30 days from the expiration of the time prescribed by these rules.
Subd. 3. Contents of Petition for Review. The petition for review ~~shall~~must not exceed 10 pages, exclusive of the appendix, and ~~shall~~must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:	Subd. 3. Contents of Petition for Review. The petition for review must not exceed 10 pages, exclusive of the appendix, and must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:
(1) the names, addresses, and telephone numbers of the attorneys for all parties; (2) the date ~~the decision of~~ the Court of Appeals ~~was~~ filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals; (3) a concise statement of the legal issue or issues presented for review, ~~along with an indication of~~indicating how ~~each issue was decided in~~ the ~~trial~~district court and ~~in~~ the	(1) the names, addresses, and telephone numbers of the attorneys for all parties; (2) the date the Court of Appeals filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals; (3) a concise statement of the legal issue or issues presented for review, indicating how the district court and the Court of Appeals decided each issue;

Court of Appeals decided each issue; (4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the ~~trial~~district court and ~~trial~~ district court judge, and the disposition of the case in the ~~trial~~district court and in the Court of Appeals; (5) a concise statement of facts indicating briefly the nature of the case, and including only ~~those~~the facts relevant to the issue(s) ~~or issues~~ sought to be reviewed; (6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and (7) an appendix containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda ~~relating thereto from the trial court~~.	(4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the district court and district court judge, and the disposition of the case in the district court and in the Court of Appeals; (5) a concise statement of facts indicating briefly the nature of the case, and including only the facts relevant to the issue(s) sought to be reviewed; (6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and (7) an appendix containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda.
Subd. 4. Discretionary Review. ~~Review of any decision of the Court of Appeals is discretionary with the~~The Supreme Court may exercise discretionary review of any Court of Appeals' decision. The following criteria may be considered: (1) the decision presents an important question ~~presented is an important one upon~~ on which the Supreme Court should rule; (2) the Court of Appeals has ruled on the constitutionality of a statute; (3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court; (4) the lower courts have so far departed from the accepted and usual course of justice ~~as to call for an exercise of~~that the Supreme Court~~'s~~ should exercise its supervisory powers; or (5) a Supreme Court decision ~~by the Supreme Court~~ will help develop, clarify, or harmonize the law; and 1. the case calls for the application of a new principle or policy;	Subd. 4. Discretionary Review. The Supreme Court may exercise discretionary review of any Court of Appeals' decision. The following criteria may be considered: (1) the decision presents an important question on which the Supreme Court should rule; (2) the Court of Appeals has ruled on the constitutionality of a statute; (3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court; (4) the lower courts have so far departed from the accepted and usual course of justice that the Supreme Court should exercise its supervisory powers; or (5) a Supreme Court decision will help develop, clarify, or harmonize the law; and 1. the case calls for the application of a new principle or policy; 2. the resolution of the question

2. the resolution of the question presented has possible statewide impact; or 3. the question ~~is~~will likely ~~to~~ recur unless resolved by the Supreme Court.	presented has possible statewide impact; or 3. the question will likely recur unless resolved by the Supreme Court.
Subd. 5. Response to Petition. When a petition for review has been filed, the ~~opposing party~~respondent ~~shall~~ must file with the clerk of the appellate courts within 20 days after service of the petition on respondent ~~four~~4 copies of any response ~~to the petition~~, not to exceed 10 pages exclusive of the appendix, ~~with the clerk of the appellate courts together with~~ and proof of service on appellant ~~within 20 days after service of the petition upon respondent~~. ~~Failure~~ Failing to respond to the petition ~~shall~~will not be considered ~~as~~ agreement with ~~the petition~~ it.	Subd. 5. Response to Petition. When a petition for review has been filed, the respondent must file with the clerk of the appellate courts within 20 days after service of the petition on respondent 4 copies of any response, not to exceed 10 pages exclusive of the appendix, and proof of service on appellant. Failing to respond to the petition will not be considered agreement with it.
Subd. 6. Cross-Petition ~~by Respondent~~. A party~~respondent~~ cross-petitioning for review to the Supreme Court ~~shall~~must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, ~~four~~4 copies of a cross-petition for review, not to exceed 10 pages exclusive of the appendix, ~~with the clerk of the appellate courts together with~~and proof of service on the petitioner~~appellant within 20 days after service of the petition for review on respondent or within 30 days after filing of the decision of the Court of Appeals, whichever is later~~. The cross-petition ~~shall~~must conform to ~~the requirements of~~ Rule 29.04, subd. 3, ~~except that~~but the procedural history, statement of facts, and appendix need not be included unless the cross-petitioner~~respondent is dissatisfied~~disagrees with them as they appear in the petition for review. The court may permit a party~~respondent~~, without filing a cross-~~appeal~~petition, to defend a decision or judgment on any ground that the law and	Subd. 6. Cross-Petition. A party cross-petitioning for review to the Supreme Court must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, 4 copies of a cross-petition for review, not to exceed 10 pages exclusive of the appendix, and proof of service on the petitioner. The cross-petition must conform to Rule 29.04, subd. 3, but the procedural history, statement of facts, and appendix need not be included unless the cross-petitioner disagrees with them as they appear in the petition for review. The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.

record permit that would not expand the relief that has been granted to the partyrespondent.	
Subd. 7. Action on Petition or Cross-Petition. The Supreme Court shallmust issue and file its order granting or denying permission to appeal review or cross-reviewappeal within 60 days offrom the date the petition iswas filed. Upon the filing of the order, the clerk of the appellate courts shallmust mail a copy of it to the attorneys for the parties.	Subd. 7. Action on Petition or Cross-Petition. The Supreme Court must file its order granting or denying review or cross-review within 60 days from the date the petition was filed. Upon the filing of the order, the clerk of the appellate courts must mail a copy of it to the attorneys for the parties.
Subd. 8. Briefs. (1) Except as otherwise provided in subdivision 10 (pretrial appeals) of this rule directs,: (a) appellant shallmust serve and file the appellant's brief and appendix within 30 days after entry of the order granting permission to appeal; and (b) respondent shallmust serve and file the respondent's brief and appendix, if any, within 30 days after service of the brief of appellant's brief.; and (c) The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. (2) TheIn all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, shall otherwise govern the form and filing of briefs, except thatbut appellant's brief shallmust also includecontain a statement of the procedural history.	Subd. 8. Briefs. (1) Except as subdivision 10 (pretrial appeals) of this rule directs: (a) appellant must serve and file the appellant's brief and appendix within 30 days after entry of the order granting permission to appeal; (b) respondent must serve and file the respondent's brief and appendix, if any, within 30 days after service of appellant's brief; and (c) appellant may serve and file a reply brief within 10 days after service of the respondent's brief. (2) In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but appellant's brief must also contain a procedural history.
Subd. 9. Oral Argument. Each party shallmust serve and file with the party's initial brief a notice stating whether the party requests oral argument is requested. Oral argument shallmust be granted unless the court determines it is unnecessary because: (1) neither party has requested oral argument in the notice served and filed with the initial briefs; (2) a party forfeits oral argument is	Subd. 9. Oral Argument. Each party must serve and file with the party's initial brief a notice stating whether the party requests oral argument. Oral argument must be granted unless the court determines it is unnecessary because: (1) neither party has requested oral argument in the notice served and filed with the initial briefs; (2) a party forfeits oral argument under

~~forfeited pursuant to~~under ~~Rule 128.02 of the~~ Minnesota Rule~~s~~ of Civil Appellate Procedure 134.01 for not timely filing its brief; or	Minnesota Rule of Civil Appellate Procedure 134.01 for not timely filing its brief; or
(3) the parties waive oral argument ~~is waived pursuant to~~ by joint agreement under ~~Rule 134.06 of the~~ Minnesota Rule~~s~~ of Civil Appellate Procedure 134.06. The Supreme Court may direct presentation of oral argument in any case.	(3) the parties waive oral argument by joint agreement under Minnesota Rule of Civil Appellate Procedure 134.06. The Supreme Court may direct presentation of oral argument in any case.
Subd. 10. Appeals Involving Pretrial Orders.	Subd. 10. Appeals Involving Pretrial Orders.
(1) Briefs. In cases originally appealed to the Court of Appeals by the ~~prosecuting attorney~~prosecutor ~~pursuant to~~under Rule 28.04, the appellant ~~shall~~must, within ~~fifteen (~~15~~)~~ days from the date of entry of the order granting ~~permission to appeal~~review, serve the appellant's brief ~~up~~on ~~opposing counsel~~respondent and file 14 copies with the clerk of the appellate courts ~~14 copies thereof~~. Within ~~eight (~~8~~)~~ days of ~~such~~ service ~~on respondent~~, respondent ~~shall~~must serve the respondent's brief ~~up~~on appellant and file 14 copies ~~thereof with said clerk~~with the clerk of appellate courts.	(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecutor under Rule 28.04, the appellant must, within 15 days from the date of entry of the order granting review, serve the appellant's brief on respondent and file 14 copies with the clerk of the appellate courts. Within 8 days of service, respondent must serve the respondent's brief on appellant and file 14 copies with the clerk of appellate courts.
(2) Hearing. ~~Additionally in such cases the~~In pretrial appeals, the date of oral argument or submission of the case to the court without oral argument ~~shall~~must not be ~~more~~later than ~~three~~3 months after all briefs have been filed. The Supreme Court ~~shall~~must not hear or accept as submitted any ~~such~~ pretrial appeal not argued or submitted ~~more than three months after all briefs have been filed and in such cases~~ within this 3-month period. If the case has not been argued or submitted within 3 months, the ~~lower~~district court ~~shall then~~must proceed ~~pursuant to~~under the judgment of the Court of Appeals as if no ~~further~~ appeal had been taken to the Supreme Court.	(2) Hearing. In pretrial appeals, the date of oral argument or submission of the case to the court without oral argument must not be later than 3 months after all briefs have been filed. The Supreme Court must not hear or accept as submitted any pretrial appeal not argued or submitted within this 3-month period. If the case has not been argued or submitted within 3 months, the district court must proceed under the judgment of the Court of Appeals as if no appeal had been taken to the Supreme Court.
(3) Attorney~~'s~~ Fees. Reasonable attorney~~'s~~ fees and costs incurred ~~shall~~must be allowed to the defendant on an appeal to the Supreme Court by the ~~prosecuting attorney~~	(3) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on an appeal to the Supreme Court by the prosecutor in a case

prosecutor in a case originally appealed by the ~~prosecuting attorney~~prosecutor to the Court of Appeals ~~pursuant to~~under Rule 28.04. ~~Such~~ The fees and costs ~~shall~~must be paid by the governmental unit responsible for the prosecution ~~involved~~.	originally appealed by the prosecutor to the Court of Appeals under Rule 28.04. The fees and costs must be paid by the governmental unit responsible for the prosecution.
(4) Conditions of Release. Upon an appeal to the Supreme Court in a case originally appealed by the ~~prosecuting attorney~~ prosecutor ~~pursuant to~~under Rule 28.04, Rule 6.02, subds. 1 and 2, govern~~s~~ the conditions for defendant's release pending the appeal ~~shall be governed by Rule 6.02, subd. 1 and subd. 2~~.	(4) Conditions of Release. Upon an appeal to the Supreme Court in a case originally appealed by the prosecutor under Rule 28.04, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release pending the appeal.
Subd. 11. Other Procedures. The ~~provisions of~~ following rules govern below-listed aspects of an appeal to the Supreme Court from the Court of Appeals: • Rule 28.02, subd. 4(4)~~,~~; ~~concerning~~ stay of appeal for postconviction proceedings~~,~~; • Rule 28.02, subd. 5~~,~~: ~~concerning~~ proceeding~~s~~ in forma pauperis~~,~~; • Rule 28.02, subd. 6~~,~~: ~~concerning~~ stay~~s,~~; • Rule 28.02, subd. 7~~,~~: ~~concerning~~ release of defendant~~,~~; • Rule 28.02, subd. 8~~,~~: ~~concerning~~ record on appeal~~,~~; • Rule 28.02, subd. 11~~,~~: ~~concerning the~~ scope of review~~,~~; and • Rules 28.02, subd. 12, and 28.05, subd. 2~~,~~ ~~concerning~~ action on appeal ~~shall apply to appeals to the Supreme Court from the Court of Appeals~~.	Subd. 11. Other Procedures. The following rules govern the below-listed aspects of an appeal to the Supreme Court from the Court of Appeals: • Rule 28.02, subd. 4(4): stay of appeal for postconviction proceedings; • Rule 28.02, subd. 5: proceeding in forma pauperis; • Rule 28.02, subd. 6: stay; • Rule 28.02, subd. 7: release of defendant; • Rule 28.02, subd. 8: record on appeal; • Rule 28.02, subd. 11: scope of review; and • Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal.
Rule 29.05 Procedure for Appeals by the ~~Prosecuting Attorney~~Prosecutor in Postconviction Cases	**Rule 29.05 Procedure for Appeals by the Prosecutor in Postconviction Cases**
~~Upon~~Rule 28.04, subd. 6, applies to an appeal to the Supreme Court by the ~~prosecuting attorney~~prosecutor from an adverse final order of the district court in postconviction proceedings in a first~~-~~-degree murder case~~, the provisions of Rule 28.04, subd. 6 shall apply~~.	Rule 28.04, subd. 6, applies to an appeal to the Supreme Court by the prosecutor from an adverse final order of the district court in postconviction proceedings in a first-degree murder case.

Rule 29.06 Procedure for Prosecutor Appeals ~~by the Prosecuting Attorney~~ from a Judgment of Acquittal~~, or~~ Vacation of Judgment after a Jury Verdict of Guilty, or ~~From an~~ Order Granting a New Trial

In first-degree murder cases, Rule 28.04, subd. 8 governs ~~Upon an~~ appeals by the prosecutor to the Supreme Court ~~by the prosecuting attorney~~ from:

(1) ~~either~~ a judgment of acquittal after a jury verdict of guilty~~,~~;

(2) ~~or~~ an order vacating judgment and dismissing the case after a jury verdict of guilty~~,~~; or

(3) ~~from~~ an order granting a new trial~~, in a first degree murder case, the provisions of Rule 28.04, subd. 8 shall apply~~.

Comment—Rule 29

After a first-degree murder conviction, only the Supreme Court has appellate jurisdiction. See Minn. Stat. §§ 480A.06, subd. 1 and 632.14. This includes appeals from orders denying postconviction relief from convictions in first-degree murder cases. See Minn. Stat. § 590.06. However, appeals in first-degree murder cases before conviction are decided by the Court of Appeals under Rule 28, and may be reviewed by the Supreme Court via a petition for further review. ~~Rule 29 governs the procedure for discretionary appeals from the Court of Appeals to the Supreme Court and for appeals as of right from the district court to the Supreme Court in cases in which the defendant has been convicted of murder in the first degree.~~

~~Rule 29.01, subd. 3 (Suspension of Rules) is similar to Rule 28.01, subd. 3 governing the Court of Appeals and is taken from Fed.R.App.P. 2 and Minn.R.Civ.App.P. 102. The court, however, may not extend the time for filing a notice of appeal or a petition~~

Rule 29.06 Procedure for Prosecutor Appeals from a Judgment of Acquittal, Vacation of Judgment after a Jury Verdict of Guilty, or Order Granting a New Trial

In first-degree murder cases, Rule 28.04, subd. 8 governs appeals by the prosecutor to the Supreme Court from:

(1) a judgment of acquittal after a jury verdict of guilty;

(2) an order vacating judgment and dismissing the case after a jury verdict of guilty; or

(3) an order granting a new trial.

Comment—Rule 29

After a first-degree murder conviction, only the Supreme Court has appellate jurisdiction. See Minn. Stat. §§ 480A.06, subd. 1 and 632.14. This includes appeals from orders denying postconviction relief from convictions in first-degree murder cases. See Minn. Stat. § 590.06. However, appeals in first-degree murder cases before conviction are decided by the Court of Appeals under Rule 28, and may be reviewed by the Supreme Court via a petition for further review.

Under Minn. R. Civ. App. P. 136.02, the clerk of the appellate courts is to enter judgment under the decision of the Court of Appeals not less than 30 days after that decision is filed. The filing of a petition for review under Rule 29.04 stays entry of the judgment and transmission of the judgment back to the clerk of the district court according to Minn. R. Civ. App. P. 136.02 and 136.03. If the petition for review is denied, the judgment is to be entered and transmitted immediately.

~~*for review except as provided by Rules 29.03, subd. 3 and 29.04, subd. 2.*~~ ~~*Under Rule 29.02, subd. 1 (Appeals in First Degree Murder Cases), Minn. Stat. § 590.06 (1988), and Minn. Stat. § 632.14 (1988) direct appeals from the district court to the Supreme Court in criminal cases are permitted only from either a final judgment of conviction of murder in the first degree or an adverse final order in a postconviction proceeding in such a case. Only the defendant may appeal from a final judgment of conviction, but either party may appeal from an adverse final order in a post conviction proceeding. The prosecutor may also appeal from a trial court judgment of acquittal after a jury returns a verdict of guilty, or from a trial court order vacating judgment and dismissing the case after a jury returns a verdict of guilty, without violating the constitutional protection against double jeopardy. United States v. Wilson, 420 U.S. 332, 344-45, 95 S.Ct. 1013, 1022-23 (1975). Other charges which were joined for prosecution with the first degree murder charge may be included on the appeal. Rule 29.02, subd. 1 permits an appeal only from final judgment as defined in Rule 29.02, subd. 3. Therefore, appeals of any matters in a first degree murder prosecution arising before final judgment, such as an appeal by the prosecuting attorney of a pretrial order, should go to the Court of Appeals under Rule 28 initially.*~~ ~~*Under Rule 29.02, subd. 2 (Appeals from Court of Appeals), the discretionary appeal to the Supreme Court is taken from the decision of the Court of Appeals. The procedure for such an appeal is set forth in Rule 29.04.*~~ ~~*The procedure for appeals in first degree murder cases as set forth in Rule 29.03 is basically the same as that set forth in Rule 28.02 for appeals to the Court of Appeals by defendants in all other criminal cases. See the*~~	

~~*comments on Rule 28.02 for explanations of those provisions that are similar. Oral argument on the appeal of a first degree murder case is governed by Rule 29.04, subd. 3 and the comments to that rule also apply.*~~

~~*The discretionary appeal to the Supreme Court under Rule 29.04 (Procedure for Appeals from Court of Appeals) is taken from the final decision of the Court of Appeals. The time limits specified in Rule 29.04, subd. 2 (Time for Petitioning) for filing a petition for review run from the date of filing of that final decision with the clerk of the appellate courts. The clerk of the appellate courts is required by Minn.R.Civ.App.P. 136.01, subd. 2 to mail copies of the final decision to the attorneys for the parties and to the trial court when the Court of Appeals files its decision.*~~

Under Minn. R. Civ. App. P. 136.02, the clerk of the appellate courts is to enter judgment ~~pursuant to~~under the decision of the Court of Appeals not less than 30 days after that decision is filed. The filing of a petition for review under Rule 29.04 stays entry of the judgment and transmission of the judgment back to the clerk of the ~~trial court~~district court according to Minn. R. Civ. App. P. 136.02 and 136.03. If the petition for review is denied, the judgment is to be entered and transmitted immediately.

~~*Rule 29.04, subd. 2 (Time for Petitioning) provides the time limit for petitioning the Supreme Court for review of a decision by the Court of Appeals. In such cases either the defendant or the prosecuting attorney can petition for review to the Supreme Court from an adverse decision in the Court of Appeals. This includes appeals in postconviction cases that were originally appealed to the Court of Appeals.*~~

~~*The criteria set forth in Rule 29.04, subd. 4 (Discretionary Review) to be*~~

~~*considered by the Supreme Court in deciding whether to grant a petition for review are the same as those set forth in Minn.R.Civ.App.P. 117, subd. 2. The rule is based in part on Minn. Stat. § 480A.10, subd. 1 (1982).*~~ ~~*The provision in Rule 29.04, subd. 6 (Cross-Petition by Respondent) permitting a respondent to defend a decision or judgment on any ground that the law and record permit even without filing a cross-petition is taken from Rule 10.5 of the Rules of the Supreme Court of the United States.*~~ ~~*The 60-day time limit for granting or denying permission to appeal as provided in Rule 29.04, subd. 7 (Action on Petition or Cross-Petition) is taken from Minn. Stat. § 480A.10, subd. 1 (1982).*~~ ~~*Except as provided by Rule 29.04, subd. 10 (Appeals Involving Pretrial Orders), the time limits for serving and filing briefs under Rule 29.04, subd. 8 (Briefs) are the same as provided in Minn.R.Civ.App.P. 131.01 for civil cases. See Minn.R.Civ.App.P. 128, 129, 130, 131, and 132 for other provisions governing the form and filing of briefs in a criminal case.*~~ ~~*Rule 29.04, subd. 9 (Oral Argument) is based on Minn.R.Civ.App.P. 134.01. See Minn.R.Civ.App.P. 134.02, 134.03, 134.04, 134.05, 134.06, 134.07, and 134.08 for other provisions governing oral argument in a criminal case.*~~ ~~*Rule 29.04, subd. 10 (Appeals Involving Pretrial Orders) provides additional limitations upon appeals to the Supreme Court for cases which were originally appealed to the Court of Appeals by the prosecuting attorney under Rule 28.04.*~~ ~~*Rule 29.04, subd. 11 (Other Procedures) provides by reference that certain*~~	

~~*procedures set forth in Rule 28 shall also apply to discretionary appeals from the Court of Appeals to the Supreme Court under Rule 29.04. See the comments to Rule 28 for an explanation of those procedures referred to by Rule 29.04, subd. 11.*~~	

Proposed Revisions to Minn. R. Crim. P. 30

Original Language Showing Markup	Proposed Revised Language
Rule 30. Dismissal	**Rule 30. Dismissal**
Rule 30.01 By ~~Prosecuting Attorney~~Prosecutor	**Rule 30.01 By Prosecutor**
The ~~prosecuting attorney~~prosecutor may ~~in writing or on the record, stating the reasons therefor, including the satisfactory completion of a pretrial diversion program,~~ dismiss a complaint or tab charge without ~~leave~~ the court's approval~~of court~~, and may dismiss an indictment with ~~leave of~~the court's approval. The prosecutor must state the reasons for the dismissal in writing or on the record. In felony and gross misdemeanor cases, if the dismissal is on the record, it ~~shall~~must be transcribed and filed.	The prosecutor may dismiss a complaint or tab charge without the court's approval, and may dismiss an indictment with the court's approval. The prosecutor must state the reasons for the dismissal in writing or on the record. In felony and gross misdemeanor cases, if the dismissal is on the record, it must be transcribed and filed.
Rule 30.02 By Court	**Rule 30.02 By Court**
~~If there is unnecessary delay by the prosecution in bringing a defendant to trial, the~~ The court may dismiss the complaint, indictment, or tab charge if the prosecutor has unnecessarily delayed bringing the defendant to trial.	The court may dismiss the complaint, indictment, or tab charge if the prosecutor has unnecessarily delayed bringing the defendant to trial.
Comment—Rule 30	**Comment—Rule 30**
Stated reasons for dismissal under Rule 30.01 may include satisfactory completion of a pretrial diversion program. *~~Rule 30.01 (Dismissal by Prosecuting Attorney) is adopted from F.R.Crim.P. 48(a) except that dismissal of a complaint or tab charge does not require leave of court. As to when jeopardy attaches, see comment to Rule 25.02.~~ According to State v. Aubol, 309 Minn. 323, 244 N.W.2d 636 (1976), leave to dismiss an indictment must be granted if the prosecutor has provided a factual basis for the insufficiency of the evidence to support a conviction, and the court is satisfied that the prosecutor has not abused prosecutorial discretion.* *~~Prosecuting attorneys~~ Prosecutors and judges should be aware of their obligations under Minn. Stat. § 611A.0315 ~~(1992)~~ of the Minnesota Crime Victims Rights Act concerning notice to domestic abuse victims upon dismissal or refusal*	*Stated reasons for dismissal under Rule 30.01 may include satisfactory completion of a pretrial diversion program.* *According to State v. Aubol, 309 Minn. 323, 244 N.W.2d 636 (1976), leave to dismiss an indictment must be granted if the prosecutor has provided a factual basis for the insufficiency of the evidence to support a conviction, and the court is satisfied that the prosecutor has not abused prosecutorial discretion.* *Prosecutors and judges should be aware of their obligations under Minn. Stat. § 611A.0315 of the Minnesota Crime Victims Rights Act concerning notice to domestic abuse victims upon dismissal or refusal to prosecute the charge.*

to prosecute the charge. ~~Rule 30.02 (Dismissal by Court) is taken from F.R.Crim.P. 48(b) and takes the place of Minn. Stat. § 611.04 (1971). See also comment to Rule 11.11 relative to the constitutional right to a speedy trial and the consequences of a denial.~~	

Proposed Revisions to Minn. R. Crim. P. 31

Original Language Showing Markup	Proposed Revised Language
Rule 31. Harmless Error and Plain Error	**Rule 31. Harmless Error and Plain Error**
Rule 31.01 Harmless Error	**Rule 31.01 Harmless Error**
Any error~~, defect, irregularity or variance which~~that does not affect substantial rights ~~shall~~must be disregarded.	Any error that does not affect substantial rights must be disregarded.
Rule 31.02 Plain Error	**Rule 31.02 Plain Error**
Plain error~~s or defects~~ affecting a substantial right~~s may~~can be considered by the court ~~up~~on motion~~s~~ for new trial, post-trial motion~~s~~, ~~and~~or on appeal ~~although~~even if ~~they were~~it was not brought to the ~~attention of the~~ trial court's attention.	Plain error affecting a substantial right can be considered by the court on motion for new trial, post-trial motion, or on appeal even if it was not brought to the trial court's attention.
Comment—Rule 31	**Comment—Rule 31**
~~*Rule 31.01 (Harmless Error) comes from F.R.Crim.P. 52(a).*~~ ~~*Rule 31.02 (Plain Error) is adapted from F.R.Crim.P. 52(b).*~~ *On appeal, the plain error doctrine applies to unobjected—to prosecutorial misconduct. The defendant bears the burden of showing that error occurred and that it was plain. Once the defendant has made that showing, the burden rests with the prosecutor to show that the error did not affect the defendant's substantial rights. See State v. Ramey, 721 N.W.2d 294, 299-300 (Minn. 2006).*	*On appeal, the plain error doctrine applies to unobjected-to prosecutorial misconduct. The defendant bears the burden of showing that error occurred and that it was plain. Once the defendant has made that showing, the burden rests with the prosecutor to show that the error did not affect the defendant's substantial rights. See State v. Ramey, 721 N.W.2d 294, 299-300 (Minn. 2006).*

Proposed Revisions to Minn. R. Crim. P. 32

Original Language Showing Markup	Proposed Revised Language
Rule 32. Motions ~~An application~~Requests to the court for an order ~~shall~~must be by motion. A motion other than one made during a trial or hearing ~~shall~~must be in writing, unless the court or these rules permit it to be made orally. The motion ~~shall~~must state the grounds upon which it is made and ~~shall~~must set forth the relief or order sought. A motion ~~and~~ may be supported by affidavit. **Comment—Rule 32** ~~*Rule 32(Motions) is taken from F.R.Crim.P. 47 and Minn.R.Civ.P. 7.02.*~~	**Rule 32. Motions** Requests to the court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing, unless the court or these rules permit it to be made orally. The motion must state the grounds on which it is made and must set forth the relief or order sought. A motion may be supported by affidavit.

Proposed Revisions to Minn. R. Crim. P. 33

Original Language Showing Markup	Proposed Revised Language
Rule 33. Service and Filing of Papers	**Rule 33. Service and Filing of Papers**
Rule 33.01 Service; Where Required	**Rule 33.01 Service; Where Required**
Written motions – other than those ~~which are~~ heard ex parte – written notices, and other similar papers ~~shall~~must be served ~~up~~on each ~~of the parties~~party.	Written motions – other than those heard ex parte – written notices, and other similar papers must be served on each party.
Rule 33.02 Service; ~~How~~ On Whom Made	**Rule 33.02 Service; On Whom Made**
~~Whenever under these rules or by an order of court service is~~ Service required or permitted to be made ~~up~~on a ~~party~~ represented party must~~by an attorney, the service shall~~ be made ~~up~~on the attorney unless the court orders ~~personally is ordered by the court.~~ personal service ~~up~~on the party. Service ~~up~~on the attorney or ~~upon a~~ party must~~shall~~ be made in the manner provided in civil actions, ~~or~~ as ordered by the court, or as required by these rules.	Service required or permitted to be made on a represented party must be made on the attorney unless the court orders personal service on the party. Service on the attorney or party must be made in the manner provided in civil actions, as ordered by the court, or as required by these rules.
Rule 33.03 Notice of Orders	**Rule 33.03 Notice of Orders**
Upon~~Immediately upon the~~ entry of an order made on a written motion subsequent to arraignment, the ~~clerk~~court administrator must promptly~~shall~~ mail a copy to each party ~~a copy thereof~~ and must~~shall~~ make a record of the mailing. Lack of notice of ~~the~~ entry by the ~~clerk~~ court administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, ~~except as permitted by~~unless these rules direct otherwise.	Upon entry of an order made on a written motion subsequent to arraignment, the court administrator must promptly mail a copy to each party and must make a record of the mailing. Lack of notice of entry by the court administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, unless these rules direct otherwise.
Rule 33.04 Filing	**Rule 33.04 Filing**
(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, but the originals of papers filed by facsimile transmission must be filed as provided in Rule 33.05.	(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, but the originals of papers filed by facsimile transmission must be filed as provided in Rule 33.05.

(b) ~~Except as otherwise provided by this rule, search~~Search warrants and related documents need not be filed until after execution of the search or the expiration of ~~ten~~10 days, unless this rule directs otherwise.	(b) Search warrants and related documents need not be filed until after execution of the search or the expiration of 10 days, unless this rule directs otherwise.
(c) The prosecutor may request that a~~A~~ complaint, indictment, application, arrest warrant, search warrant, supporting affidavits, and any order granting the request not be filed~~or affidavit requesting a warrant directing the arrest of a person or authorizing a search and seizure may contain or be accompanied by a request by the prosecuting attorney that the complaint, indictment, application or affidavit, any supporting evidence or information, and any order granting the request, not be filed~~.	(c) The prosecutor may request that a complaint, indictment, application, arrest warrant, search warrant, supporting affidavits, and any order granting the request not be filed.
(d) An order ~~shall~~must be issued granting the request in whole or in part~~,~~ if, ~~the judge finds~~ from affidavits, sworn testimony, or other evidence, the court finds ~~that there are~~ reasonable grounds exist to believe that: ~~–~~(1) in the case of complaint, indictment, or arrest documents, ~~such~~ filing may cause a potential arrestee~~lead to any person~~ to flee, hide,~~be arrested fleeing or hiding~~ or otherwise prevent~~ing~~ the execution of the warrant; or, (2) in the case of a search warrant application or affidavit, ~~such~~ filing may cause the~~this~~ search or a related search to be unsuccessful, ~~or could~~ create a substantial risk of injury to~~injuring~~ an innocent person, or severely hamper~~ing~~ an ongoing investigation.	(d) An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that: (1) in the case of complaint, indictment, or arrest documents, filing may cause a potential arrestee to flee, hide, or otherwise prevent the execution of the warrant; or, (2) in the case of a search warrant application or affidavit, filing may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.
(e) The order ~~shall~~must further direct that on ~~upon the~~ execution ~~of~~ and return of an arrest warrant, the filing required by subd. (a) must~~shall forthwith~~ be complied with immediately. ~~; and in the case of~~ For a search warrant, ~~the application or affidavit in support thereof shall be filed forthwith~~ following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other ~~such~~ time as ~~directed by~~ the ~~judge~~court directs. Until such filing, the documents and materials ordered withheld from filing must~~shall~~ be retained by the judge or the judge's designee.	(e) The order must further direct that on execution and return of an arrest warrant, the filing required by subd. (a) must be complied with immediately. For a search warrant, following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

Rule 33.05 Facsimile Transmission Complaints, orders, summons, warrants, and other documents – including orders and warrants authorizing the interception of communications ~~pursuant to~~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 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 must be promptly filed.	**Rule 33.05 Facsimile Transmission** Complaints, orders, summons, warrants, and other 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 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 must be promptly filed.
Comment—Rule 33 ~~*Rule 33.01 (Service; Where Required) comes from F.R.Crim.P. 49(a).*~~ ~~*Rule 33.02 (Service; How Made) is taken from F.R.Crim.P. 49(b) and provides that service upon the attorney or a party shall be made in the manner provided in civil actions, or as ordered by the court or as provided by these rules.*~~ *Minn.R.Civ.P. 5.02 provides the method for service in civil actions.* ~~*Rule 21.02 of these rules provides how the defendant shall be served with notice of the taking of depositions. Rules requiring notice or service are: Rules 7.01 (Rasmussen and Spreigl Notices); 9.02, subd. 1(3) (Notice of Defenses); 9.02, subd. 2(2) (Notice of Time and Place of Discovery on Order of Court); 9.02, subd. 2(4) (Notice of Results of Discovery Following Order of Court); 10.04, subd. 1 (Service of Motions); 28.02, subd. 3 (Discretionary Appeal); 28.02, subd. 4 (Procedure for Appeals Other than Sentencing Appeals by the Defendant); 28.04, subd. 2 (Procedure Upon Appeal of Pretrial Order by the Prosecuting Attorney); 28.04, subd. 3 (Cross-Appeal by Defendant); 28.05, subd. 1(1) (Notice of Appeal and Briefs in Sentencing Appeals); 29.03, subds. 1 and 3 (Procedure for Appeals by Defendant in First Degree Murder*~~	**Comment—Rule 33** *Minn.R.Civ.P. 5.02 provides the method for service in civil actions.*

~~*Cases); 29.04, subds. 1 and 2 (Procedure for Appeals From Court of Appeals); 29.04, subd. 5 (Response to Petition); 29.04, subd. 6 (Cross-Petition by Respondent).*~~ ~~*Rule 33.03 (Notice of Orders) comes from F.R.Crim.P. 49(c) and Minn.R.Civ.P. 77.04. Rules 28.02, subd. 4(3), 29.03, subd. 3, and 29.04, subd. 2 provide for extension of time for taking an appeal.*~~ ~~*Rule 33.04 (Filing) adopts F.R.Crim.P. 49(d) and Minn.R.Civ.P. 5.04 and 5.05.*~~ ~~*The Rule as amended [in 1978] contains several safeguards against unwarranted orders which withhold the filing of documents referred to in the Rule. The prosecuting attorney, a responsible public official, must request the order; the request must be supported by adequate evidence showing the need for the order; the need must be found by a judge to exist; and, finally, when the arrest or search warrant has been executed, the documents must be filed immediately, and thereupon become available to the public. Supporting precedents for this Rule are: Grand jury secrecy about indictment issued; (Rule 18.08), Minn. Stat. § 626A.06, subd. 9, prohibiting disclosures of applications for and granting of warrants for interception of communications.*~~ ~~*Rule 33.05 (Facsimile Transmission) is taken from Supreme Court Order # C4-87-1853, issued September 21, 1987, amended October 3, 1988. The rule supersedes Minn. Stat. §§ 626.11 and 626A.06, subd. 7 to the extent inconsistent.*~~	

Proposed Revisions to Minn. R. Crim. P. 34

Original Language Showing Markup	Proposed Revised Language
Rule 34. Time	**Rule 34. Time**
Rule 34.01 Computation	**Rule 34.01 Computation**
~~Except~~ Time must be computed as follows except as provided by Rules 3.02, subd. 2~~(2),~~; 4.02, subd. 5(1)~~,~~; 4.02, subd. 5(3)~~,~~; and 4.03~~, time shall be computed as follows:~~.	Time must be computed as follows except as provided by Rules 3.02, subd. 2; 4.02, subd. 5(1); 4.02, subd. 5(3); and 4.03.
The day of the act or event from which the designated period of time begins to run ~~shall~~must not be included. The last day of the period ~~so computed shall~~must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day ~~which~~that is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is seven or fewer days~~ or less~~, intermediate Saturdays, Sundays, and legal holidays ~~shall~~must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, and any other day appointed as a holiday by the President or the Congress of the United States or by the State.	The day of the act or event from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is seven or fewer days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, and any other day appointed as a holiday by the President or the Congress of the United States or by the State.
Rule 34.02 ~~Enlargement~~Extension	**Rule 34.02 Extension**
When an act is required or allowed to be done ~~at or~~ within a specified time, the court may for cause~~ shown~~: (a) ~~may at any time in its discretion (1)~~ within the time allowed, extend the time, with or without motion or notice, ~~order the period enlarged~~ if a party requests ~~therefor is made~~the extension before ~~the expiration of~~ the original ~~period~~time ~~originally prescribed or as~~, or the previously-extended time, expires~~by previous order, or (2)~~; (b) after the time allowed has expired, permit the act to be done, upon motion ~~made after the expiration of the specified period, permit the act to be done~~ if ~~the~~ failure to act was the result of excusable neglect~~:~~. ~~but the~~The court may not extend the time for taking any action under Rules 26.03, subd.	When an act is required or allowed to be done within a specified time, the court may for cause: (a) within the time allowed, extend the time, with or without motion or notice, if a party requests the extension before the original time, or the previously-extended time, expires; (b) after the time allowed has expired, permit the act to be done, upon motion, if failure to act was the result of excusable neglect. The court may not extend the time for taking any action under Rules 26.03, subd. 18(3); 26.04, subd. 1(3); or 26.04, subd. 3, or extend the time to appeal except as provided by Rules 28.02, subd. 4(3)(g); 29.03, subd. 3(f); and 29.04, subd. 2.

~~17~~18(3); 26.04, subd. 1(3); or 26.04, subd. ~~2~~3, or extend the time to appeal except as provided by Rules 28.02, subd. 4(3)(g)~~,~~; 29.03, subd. 3(f)~~,~~; and 29.04, subd. 2~~ the time for taking an appeal~~.

Rule 34.03 For Motions; ~~-~~Affidavits

A written notice of motion and motion, other than one ~~which~~that may be heard ex parte, ~~and notice of the hearing thereof shall~~must be served ~~not later than~~ at least five days before the time specified for the hearing, unless a rule or court order fixes a different ~~period is fixed by rule or order of court~~time. For cause~~ shown, such~~ an order fixing a different time may be ~~made~~granted on ex parte application.

When a party supports a motion ~~is supported~~ by affidavit, the affidavit ~~shall~~must be served ~~not less than~~at least one day before the hearing, unless the court permits ~~them~~it to be served ~~at a~~ later ~~time~~.

Rule 34.04 Additional Time After Service by Mail

When~~ever~~ a party ~~has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served upon the party~~is served with a notice or other paper by mail, three days ~~shall~~must be added to the ~~prescribed period~~time the party has the right, or is required, to act.

Rule 34.05 Unaffected by Expiration

The ~~continued existence or the~~ expiration of a term of court does not affect ~~or limit~~ the time-period ~~of time provided~~ for ~~the~~ doing ~~of~~ any act or ~~the~~ taking ~~of~~ any proceeding, or affect the court's power ~~of the court~~ to do any act or take any proceeding in any pending action~~ which has been pending before it~~.

Comment—Rule 34

Rule 34.01 (Computation) adopts Minn.R.Civ.P. 6.01 except that it excludes Saturdays, Sundays, and legal holidays from computation when the period of time allowed is "seven days or less" rather than "less than seven

Rule 34.03 For Motions; Affidavits

A written notice of motion and motion, other than one that may be heard ex parte, must be served at least five days before the time specified for the hearing, unless a rule or court order fixes a different time. For cause, an order fixing a different time may be granted on ex parte application.

When a party supports a motion by affidavit, the affidavit must be served at least one day before the hearing, unless the court permits it to be served later.

Rule 34.04 Additional Time After Service by Mail

When a party is served with a notice or other paper by mail, three days must be added to the time the party has the right, or is required, to act.

Rule 34.05 Unaffected by Expiration

The expiration of a term of court does not affect the time-period for doing any act or taking any proceeding, or affect the court's power to do any act or take any proceeding in any pending action.

Comment—Rule 34

Rule 34.01 (Computation) adopts Minn.R.Civ.P. 6.01 except that it excludes Saturdays, Sundays, and legal holidays from computation when the period of time allowed is

days." Minnesota Statutes § 645.44, subd. 5, sets forth the legal holidays for the State of Minnesota. *In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the Supreme Court held that when calculating the five-day period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays must be excluded from the computation of the period allowed under Rule 34.01 before the additional three days by mail are added under Rule 34.04.* ~~*Rule 34.02 (Enlargement) is taken from F.R.Crim.P. 45(b) and Minn.R.Civ.P. 6.02. It permits an extension of time except for motions for judgment of acquittal (Rule 26.03, subd. 17(3)), for new trial (Rule 26.04, subd. 1(3)), or to vacate judgment (Rule 26.04, subd. 2). The time for taking an appeal may not be enlarged except as provided by Rules 28.02, subd. 4(3), 29.03, subd. 3, and 29.04, subd. 2.*~~ ~~*Rule 34.03 (For Motions; Affidavits) is taken from F.R.Crim.P. 46(d) and Minn.R.Civ.P. 6.04. Rule 10.03 requires notice of motions not later than three days before the Omnibus Hearing.*~~ ~~*Rule 34.04 (Additional Time After Service by Mail) is taken from Fed.R.Crim.P. 45(c) and Minn.R.Civ.P. 6.05.*~~ ~~*Rule 34.05 (Unaffected by Expiration of Term of Court) comes from Minn.R.Civ.P. 6.03.*~~	*"seven days or less" rather than "less than seven days." Minnesota Statutes § 645.44, subd. 5, sets forth the legal holidays for the State of Minnesota.* *In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the Supreme Court held that when calculating the five-day period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays must be excluded from the computation of the period allowed under Rule 34.01 before the additional three days by mail are added under Rule 34.04.*

Proposed Revisions to Minn. R. Crim. P. 35

Original Language Showing Markup	Proposed Revised Language
Rule 35. Courts and ~~Clerks~~Court Administration	**Rule 35. Courts and Court Administration**
The district courts ~~shall be~~are deemed open at all times for the purpose of filing any proper paper, ~~of~~ issuing and returning or certifying process, and ~~of~~ making motions and orders. Unless ~~the court orders~~ otherwise ordered, the court~~s shall be~~are deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The ~~clerk's~~court administrator's office, with the ~~clerk~~court administrator or a deputy in attendance, ~~shall~~must be open during business hours on all days except Saturdays, Sundays, or ~~particular~~ legal holidays.	The district courts are deemed open at all times for the purpose of filing any proper paper, issuing and returning or certifying process, and making motions and orders. Unless otherwise ordered, the courts are deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The court administrator's office, with the court administrator or a deputy in attendance, must be open during business hours on all days except Saturdays, Sundays, or legal holidays.
Comment—Rule 35	**Comment—Rule 35**
~~*Rule 35 (Courts and Clerks) is adapted from F.R.Crim.P. 56 and Minn.R.Civ.P. 77.01.*~~ *Legal holidays are defined by Minn. Stat. § 645.44~~1~~, subd. 5 ~~(1971)~~. The rule supersedes Minn. Stat. §§ 484.07~~,~~and 484.08 to the extent inconsistent.*	*Legal holidays are defined by Minn. Stat. § 645.44, subd. 5. The rule supersedes Minn. Stat. §§ 484.07 and 484.08 to the extent inconsistent.*

Proposed Revisions to Minn. R. Crim. P. 36

Original Language Showing Markup	Proposed Revised Language
Rule 36. Search Warrants ~~Up~~on Oral Testimony	**Rule 36. Search Warrants on Oral Testimony**
Rule 36.01 General Rule	**Rule 36.01 General Rule**
~~Subject to the limitations contained in this rule, an officer legally authorized to~~A request for a search warrant may be made, in whole or in part, ~~make such request upon~~ on sworn oral testimony~~, in whole or in part~~, to a judge~~, or judicial officers~~subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. ~~Any W~~written submissions may be presented ~~or communicated~~ by facsimile transmission~~, as well as~~or by other appropriate means.	A request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge, subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile transmission, or by other appropriate means.
Rule 36.02 When Request by Oral Testimony Appropriate	**Rule 36.02 When Request by Oral Testimony Appropriate**
An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit. The judge ~~or judicial officer should~~ must make this determination the initial focus of the oral warrant request.	An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit. The judge must make this determination the initial focus of the oral warrant request.
Rule 36.03 Application	**Rule 36.03 Application**
The person requesting the warrant ~~shall~~must prepare a ~~document to be known as a~~ duplicate original warrant and ~~shall~~must read the duplicate original warrant, verbatim, to the judge ~~or judicial officer~~. The judge ~~or judicial officer shall~~ must prepare an original warrant by ~~enter~~recording, verbatim, what ~~is so~~has been read by the applicant ~~on a document to be known as the original warrant~~. The judge ~~or judicial officer~~ may direct ~~that the warrant be modified~~modifications, which ~~and any modification shall~~ must be included on ~~both~~ the original and the duplicate original warrant.	The person requesting the warrant must prepare a duplicate original warrant and must read the duplicate original warrant, verbatim, to the judge. The judge must prepare an original warrant by recording, verbatim, what has been read by the applicant. The judge may direct modifications, which must be included on the original and the duplicate original warrant.
Rule 36.04 Testimony Requirements	**Rule 36.04 Testimony Requirements**
When the officer informs the judge ~~or judicial~~	When the officer informs the judge that the

~~officer~~ that the purpose of the communication is to request a search warrant, the judge ~~or judicial officer shall~~must:	purpose of the communication is to request a search warrant, the judge must:
(1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge~~ or judicial officer~~, the recording may be done by the applicant for the search warrant, ~~provided that~~but the tape or other medium ~~on which~~used to make the record ~~is made shall~~ must be submitted to the issuing judge ~~or judicial officer~~ as soon as practical, and~~, in any event, not~~ no later than the time for filing ~~as provided by~~in Rule 33.04.	(1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge, the recording may be done by the applicant for the search warrant, but the tape or other medium used to make the record must be submitted to the issuing judge as soon as practical, and no later than the time for filing in Rule 33.04.
(2) Identify ~~for the record~~ and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.	(2) Identify and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.
(3) As soon as practical after receiving the testimony~~ is received as practical~~, the judge ~~or judicial officer shall~~ must direct that the record of the oral warrant request be transcribed. The judge ~~or judicial officer shall~~ must certify the accuracy of the transcription. If a longhand verbatim record is made, the judge ~~or judicial officer shall~~ must sign it.	(3) As soon as is practical after receiving the testimony, the judge must direct that the record of the oral warrant request be transcribed. The judge must certify the accuracy of the transcription. If a longhand verbatim record is made, the judge must sign it.
Rule 36.05 Issuance of Warrant	**Rule 36.05 Issuance of Warrant**
The judge must order issuance of a warrant if:	The judge must order issuance of a warrant if:
(a) ~~If the judge or judicial officer is satisfied that~~ the circumstances ~~are such as to~~ make it reasonable to dispense with a written affidavit~~,~~; (b) ~~that~~ the warrant request ~~is in all other ways in conformity~~conforms with the law~~,~~; and (c) ~~and that~~ probable cause exists for issuance of the warrant~~ exists,~~. ~~the~~The judge ~~or judicial officer shall~~ must order the issuance of a warrant by directing the ~~person requesting the warrant~~applicant to sign the judge's ~~or judicial officer's~~ name on the duplicate original warrant. The judge ~~or judicial officer shall~~ must immediately sign the original warrant and enter on the face of the original warrant the exact time ~~when~~the judge signed the warrant~~ was signed~~. The finding of probable cause ~~for a~~	(a) the circumstances make it reasonable to dispense with a written affidavit; (b) the warrant request conforms with the law; and (c) probable cause exists for issuance of the warrant. The judge must order the issuance of a warrant by directing the applicant to sign the judge's name on the duplicate original warrant. The judge must immediately sign the original warrant and enter on the face of the original warrant the exact time the judge signed the warrant. The finding of probable cause may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

~~warrant upon oral testimony~~ may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Rule 36.06 Filing

The ~~filing of the~~ original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents ~~shall~~ must be filed as~~in accordance with~~ Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium ~~on which the record is made shall~~ must also be filed with the court ~~also~~.

Rule 36.07 Contents of Warrant

The contents of a warrant issued ~~upon~~on oral testimony ~~shall~~ must be the same as the contents of a warrant ~~upon~~on affidavit.

Rule 36.08 Execution

The execution of a warrant obtained through oral testimony ~~shall be~~ is subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant ~~shall~~ must enter the exact time of execution on the face of the duplicate original warrant.

Comment—Rule 36

The procedure found in Rule 36 is derived from State v. Lindsey, 473 N.W.2d 857 (Minn. 1993).

~~*The procedure prescribed by Rule 36 for obtaining a search warrant upon oral testimony, in whole or in part, is intended to provide a uniform method for addressing this situation, which has arisen in a number of cases in Minnesota. See e.g., State v. Cook, 498 Minn. 17 (Minn.1993); State v. Lindsey, 473 N.W.2d 857 (Minn.1991); State v. Andries, 297 N.W.2d 124 (Minn.1980); State v. Meizo, 297 N.W.2d 126 (Minn.1980). Fed.R.Crim.P. 41(c)(2), upon which this rule is largely modeled, and the statutes or rules of numerous states provide for obtaining oral warrants.*~~

Rule 36.06 Filing

The original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents must be filed as Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium must also be filed with the court.

Rule 36.07 Contents of Warrant

The contents of a warrant issued on oral testimony must be the same as the contents of a warrant on affidavit.

Rule 36.08 Execution

The execution of a warrant obtained through oral testimony is subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant must enter the exact time of execution on the face of the duplicate original warrant.

Comment—Rule 36

The procedure found in Rule 36 is derived from State v. Lindsey, 473 N.W.2d 857 (Minn. 1993).

Minn. Stat. § 626.16, which requires that a written document be prepared for presentation to the person whose premises or property is searched, or that can be left on the premises if no persons are present, mandates the preparation of the duplicate warrant in Rule 36.03. Judges and judicial officers who may receive oral warrant requests at home are advised to have appropriate forms available for preparation of the original warrant.

Judges are cautioned to avoid engaging in any

~~*Rule 36.01 provides that the oral request may be made via any electronic method of oral communication. This is in conformity with Fed.R.Crim.P. 41(c)(2)(A). See also N.J. Rules of Crim.P. 3:5 3(5); Wis.Stat. § 968.12. The oral request may be supplemented by sworn written submissions. This is in accord with the amendment to Fed.R.Crim.P. 41(c)(2)(A), effective December 1, 1993.*~~

~~*Rule 36.02 establishes a standard of reasonableness for determining when circumstances dictate the substitution of an oral request for a warrant in place of the traditional written affidavits. This standard has been applied by the Minnesota Supreme Court in cases of this nature, State v. Lindsey, 473 N.W.2d 857 (Minn.1991), and is the standard applied by the federal rules. Fed.R.Crim.P. 41(c)(2)(A). This standard, rather than a stricter standard, is also utilized in order to encourage officers to obtain warrants in circumstances in which they might otherwise search without them. In assessing whether the exigency of the situation will justify a warrantless search, law enforcement officers should consider whether the possibility of obtaining a timely search warrant by oral electronic communication might subsequently prompt a reviewing court to find the warrantless search improper. See State v. Lindsey, 473 N.W.2d 857 (Minn.1991).*~~

~~*The judge or judicial officer should make the issue of why an oral warrant is required the initial item of business in the oral application process. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990). If the reasonableness of this request is not established, the judge or judicial officer should so advise the officer and terminate the oral warrant procedure. While it is difficult to establish uniform criteria for determining when and under what circumstances oral warrant requests are acceptable, and it is recognized that these circumstances may vary case to case and county to county, some general criteria for use of this process include:*~~

~~*(a) the officer cannot reach the judge or judicial officer during regular court hours;*~~

~~*(b) the officer making the search is a*~~

preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

The officer and the judge must keep in mind that in addition to the special requirements for issuance of an oral warrant, all other requirements for the issuance of a warrant must also be met, including the basis for a no-knock and nighttime warrant. See Minn. Stat. §§ 626.01-.18; 629.30.

Rules 36.07 and 36.08 emphasize that the use of the oral warrant process does not justify any other departures from traditional warrant law and practice.

~~*significant distance from a judge or judicial officer;*~~

~~*(c) the factual situation is such that it would be unreasonable for a substitute officer, who is located near the judge or judicial officer, to present a written affidavit in person in lieu of proceeding with an oral application;*~~

~~*(d) the need for a search is such that without the oral warrant procedure a search warrant could not be obtained and there would be a significant risk that evidence would be destroyed.*~~

~~*State v. Lindsey, 473 N.W.2d at 863 (quoting E. Marek, Telephonic Search Warrants: A New Equation for Exigent Circumstances, 27 Clev.S.L.Rev. 35, 41 nn. 30-31 (1978)).*~~

~~*Although not required by the rule, prosecutors may want to direct law enforcement officers in their jurisdiction to involve a prosecutor, where practical, in making the oral request for a search warrant to the judge or judicial officer. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(1) (1990). Doing so will not only make it easier for the officer to prepare the warrant, it will reduce the possibility of inadvertent omissions in the oral presentation that might compromise the validity of the warrant and that might otherwise be undetected until after the seizure is made. Involving the prosecutor in this process limits the risk of omission and helps to organize the materials for the judge or judicial officer. State v. Lindsey, 473 N.W.2d at 864, n. 2 (quoting R. Van Duizend, The Search Warrant Process, 109 Nat'l Center for State Courts (1985)).*~~

Minn. Stat. § 626.16, *which requires that a written document be prepared for presentation to the person whose premises or property is searched, or that can be left on the premises if no persons are present, mandates the* ~~*process set forth*~~*preparation of the duplicate warrant* *in Rule 36.03.* ~~*The use of a "duplicate original" warrant is modeled upon Fed.R.Crim.P. 41(c)(2)(B), and is a process also utilized in other state statutes and rules permitting oral warrants. See e.g., Ariz.Stat. § 13.3915(c); N.J.Rules of Crim.P. 3:5-3(5); Wisc.Stat. § 968.12(b). It is strongly suggested that officers carry appropriate forms with them to enable preparation of duplicate original warrants*~~

~~*without undue difficulty. Similarly, j*~~*Judges and judicial officers who may receive oral warrant requests at home are advised to have appropriate forms available for preparation of the original warrant.*

~~*Rule 36.04 establishes important procedural requirements. The desirability of a contemporaneous record was articulated in State v. Lindsey, 473 N.W.2d at 862, and the earlier opinion of State v. Meizo, 297 N.W.2d at 129, and is a requirement of Fed.R.Crim.P. 41(c)(2)(D) and state statutes and rules which permit oral warrants. The oath is an essential element of the oral warrant request process utilized by other jurisdictions that provide for oral warrants. See e.g., Fed.R.Crim.P. 41(c)(2)(A); Ariz.Stat. § 13.3914(c); N.J.Rules of Crim.P. 3:5-3(5); Wisc.Stat. § 968.12(A).*~~

Judges ~~and judicial officers~~ are cautioned to avoid engaging in any preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

~~*In order to complete the record, the recorded oral testimony must be transcribed, the transcript reviewed by the judge or judicial officer to insure its accuracy, and the transcript filed. This is a requirement of Fed.R.Crim.P. 41(c)(2)(D) and most state statutes and rules which permit oral warrants. If the recording is done by the applicant rather than the judge or judicial officer, the applicant must provide the tape or other original record to the issuing judge or judicial officer as soon as practical so that the judge or judicial officer will be able to have the transcript timely prepared and filed as required by the rule.*~~

~~*Pursuant to Rule 36.05 the judge or judicial officer may issue the warrant only after assuring that reasonable circumstances exist for the use of the oral warrant process, that the application is otherwise in conformity with law, and that probable cause exists for the issuance of the warrant.*~~ *The officer and the judge ~~or judicial officer~~ must keep in mind that in addition to the special requirements for issuance of an oral warrant, all other requirements for the issuance of a warrant must also be met, including the basis for*

a no-knock and nighttime warrant. *See Minn. Stat. §§ ~~626.05-.17~~626.01-.18; 629.30 ~~(1992)~~. ~~Once these requirements are met, the judge or judicial officer may authorize the officer to sign the name of the judge or judicial officer to the duplicate original warrant. Rule 36.05 also requires that the judge or judicial officer note the exact time the original warrant is signed.~~*

~~*In ruling on the oral warrant application, it is strongly suggested that the judge or judicial officer state on the record whether probable cause exists, what premises or persons may be searched under the warrant, and highlight any differences between the authority requested and that granted. The judge or judicial officer should also identify what items may be searched for under the warrant and indicate whether the request has been modified or limited. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(12) (1990).*~~

~~*Rule 36.06 mandates filing under the provisions of Rule 33.04, which contains special provisions for filing warrants and related documents. The judge or judicial officer is responsible for seeing that the certified transcript, any longhand verbatim record, and the original warrant are filed. Additionally, Rule 36.06 requires that if the record was made using a tape recorder, the original tape be filed as well. If any other form of electronic recording device is utilized, the medium upon which that record is made must also be filed. This requirement ensures the accuracy of the oral warrant record and emphasizes a principal concern of this process, that the oral submissions be as reviewable after the fact as traditional affidavits.*~~

Rules 36.07 and 36.08 ~~also~~ emphasize that the ~~oral warrant process must observe all the formalities of the conventional warrant process. All concerned are cautioned that the circumstances that permit the~~ use of the oral warrant process ~~do~~ does not justify any other departures from traditional warrant law and practice. ~~The additional requirement in Rule 36.08 that the person executing the warrant enter the time of execution on the duplicate original warrant is modeled on Fed.R.Crim.P. 41(c)(2)(F). Rule 36 does not specify sanctions for violation of~~

~~*the various procedural requirements of the rule. That is left to caselaw development.*~~	

APPENDIX

Criminal Rules Revision Project Punch List

Substantive items for review that were identified by the Revision Subcommittee
Last updated: 4/20/2009

Original Cite	New Cite	Issue
General	N/A	The rules do not currently contain procedures for issuance of an arrest warrant without a complaint. Should they?
General	N/A	Currently, there is a great deal of text in the rules explaining how transcripts must be ordered. It is suggested that there be an administrative rule or process for this so the concept does not need to be repeated throughout the rules. It is an administrative issue, not a procedural issue.
General	N/A	There are several points in the rules where appellate procedure is sprinkled in with trial court procedure. Should all items relating to appeal be moved to Rules 28 and 29? (Ex. 17.06, subd. 4(1); 25.01, subd. 7 and 25.03, subd. 5; 27.04, subd. 3(4)).
General	N/A	There are no procedures in the rules for continuances for dismissal for adult criminal cases. The closest thing we have for adults is Minn. R. Crim. P. 27.05, which requires an agreement signed by the prosecutor and defendant that the case will be suspended for a period of time subject to conditions. If the prosecutor later moves the court for dismissal, the case will be dismissed. Everyone assumes, however, that we *do* have procedures for continuance for dismissal, and it happens regularly. Should we create rules to govern the process?
1.04(b)	1.04(b)	Designated Gross Misdemeanor – should we leave it in or take it out? Does the designation have meaning any longer? (Related to tab charge issue noted below.)
1.04(c)	1.04(c)	Tab charge – there is not one common understanding of the term "tab charge." Some understand it to refer to a citation, some to the process of charging on the record when the initial appearance occurs before the complaint has been filed. Moreover, the short-form DWI complaint in the forms section of the rules (Form 4A) is called a tab charge. Is it possible to bring clarity to this term and its usage within the rules?
1.05, subd. 6	1.05, subd. 6	The ITV rule authorizes the court to hear cases from other districts via ITV with Chief Justice approval. How does this relate to the authority of the court to hear guilty pleas for cases from other jurisdictions upon defendant request under Rule 15.10?

Original Cite	New Cite	Issue
2.01, subd. 4	2.01, subd. 4	The rule states a court administrator can determine probable cause when the offense is punishable by a fine only. Isn't there a case that says court administrator can't make probable cause determination? Is this rule even sustainable?
4.02, subd. 5 (3) and Tab Charge Form	4.02, subd. 5 (3) and Tab Charge Form	This rule requires that if the offense is a designated gross misdemeanor, a formal complaint must be filed within a certain period following the tab charge. If Form 4A or a citation is utilized, the practice is that a formal complaint is not actually filed unless demanded by the defendant. The tab charge or citation stands as the formal charge. Should the rule be amended to reflect practice? (Note: the right to a formal complaint is also in the statements of rights section of Rule 5 [Rule 5.03; formerly Rule 5.01]).
5 8	5 8	The practice in many counties within the state is to routinely combine the Rules 5 and 8 hearings. In revising the rules during the revision project, subcommittee members determined the most significant differences between these two hearings is that the defendant usually has counsel present at the Rule 8 hearing. This facilitates the decision to enter any pleas that may be entered by that hearing. Is it possible to combine these two hearings into one procedure?
Rule 5.02, subd. 5	Rule 5.04, subd. 5	This rule, which establishes criteria for partial public defender eligibility and reimbursement, has no counterpart in statute. Should it be retained? Or should it be removed in recognition that the legislature rather than the Supreme Court determines how public defender resources are to be allocated?
6.02, subd. 1	6.02, subd. 1	Should this rule, relating to conditions of release, be updated to reflect current data needs relating to victim information: name, date of birth, and address? (For no contact orders.)
6.03, subd. 3	6.03, subd. 3	There is no burden of proof articulated for a hearing on allegations of violation of release conditions. Should it be preponderance of the evidence?
6.04	6.04	This rule states forfeiture of an appearance bond must be as provided by law. What is the law? Should there be a reference to it in the comments?
7.02	7.02	Rule 7.02 relates to providing notice of other offenses that may be offered at trial under exceptions to the exclusionary rule. Should language in the rule be changed to better mirror the language of Rule 404(b) (i.e., "other crimes, wrongs, acts")?
7.02	7.02	There are currently no uniform notice requirements for non-404(b) evidence such as relationship evidence. Should there be?

Original Cite	New Cite	Issue
9.02, subd. 1(3)(d)	9.02, subd. 1(8)	Does the duty of the defense to disclose prior convictions of the defendant implicate a 5th or 6th amendment right that arguably protects against disclosure of prior convictions, and does it also implicate the attorney-client duty of confidentiality if the attorney learned of the conviction from the client?
9.01, subd. subd. 1(5)	9.01, subd. subd. 1(5)	The rule requires the prosecutor to disclose conviction records "known to the prosecutor." Should the rule be changed to require the prosecutor to run a criminal history? Member believes there was a recent court of appeals case in which the prosecutor had not done so and the person had a MN record. It is believed the case was issued sometime within the 6 weeks prior to 9-16-08.
9.01, subd. 1(5) and 9.02, subd. (1)(3)(d)	9.01, subd. 1(5) and 9.02, subd. 1(8)	Rules require the prosecutor to provide the defendant's conviction record provided the defense tells the prosecutor of convictions of the defendant. The rules as written create a chicken and egg problem.
9.03, subd. 9	9.03, subd. 9	There is very little compliance with the requirement to file an itemized list of disclosures. Should the requirement be eliminated?
10.01	10.01, subd. 1	This rule defines what documents the pleading consists of. Should "citation" be added as a pleading? Why does the rule define pleadings?
10.01	10.01, subd. 2	This rule says failure of the indictment or complaint to charge an offense can be noticed by the court at any time. Should "tab charge" be added here?
11.01	11.01(b)	This rule states that the Omnibus Hearing must be held in the district where the alleged offense occurred. But if the offense is charged in a different venue, it will be impossible to comply with the rule. Should the rule instead require that the Omnibus Hearing be held where the offense was charged or venued?
11.03	11.04, subd. 1(c)	This rules states probable cause may be based on the entire record, including "reliable hearsay." But the sentence immediately after that states all evidence considered for probable cause is subject to the requirements in Rule 18.06, subd. 1. But 18.06 doesn't allow for "reliable hearsay." The two sentences seem to be inconsistent.
11, Comments	11, Comments	It is suggested that a paragraph be added to the comments stating that testimony used at the Omnibus Hearing can only be used for impeachment purposes.

Original Cite	New Cite	Issue
14.01(d)	14.01(d)	This rule sets forth the permissible pleas. Paragraph (d) lists double jeopardy and serialized prosecution as pleas. But they are not pleas, they are defenses. Should the rules be amended to remove paragraph (d) and either work these concepts into a more appropriate location, or eliminate them?
15	15	The rule should include specific language requiring the judge to state on the record whether the court is accepting the plea or deferring acceptance until sentencing (because acceptance of the plea is entry of the conviction).
Rule 15.01, Note at end of subd. 1 and Appendix A	Appendix A	The note at the end of subdivision 1 suggested the defendant acknowledge the plea agreement by signing it. Should this signature requirement be added to the rule? What are the ramifications for defendants who are unable to read and write or speak English?
15.01, subd. 2 9.a	15.01, subd. 2 6.i.	This provision states neither the prosecutor nor the judge could comment to the jury about the defendant's failure to testify. But in truth, the judge can offer an instruction to the jury regarding how they are to view the defendant's choice not to testify. Should this paragraph instead state the judge cannot comment "adversely?"
15.02	15.02	This rule, setting forth procedures for acceptance of a guilty plea in misdemeanor cases does not require the judge to determine whether the defendant is disabled in communication before proceeding (but note that Rule 15.01, relating to acceptance of a guilty plea in gross misdemeanor and felony cases does). Should it? If so, how would that requirement be met if the defendant files a written plea petition as provided in Rule 15.03, subd. 3?
15.10	15.10, subd. 2	The rule contains language requiring that if the offense originally arose in another jurisdiction, the court administrator must remit the fine to the court administrator in the original jurisdiction for distribution. Is this language necessary now that the courts are state funded and most fine remittances go to the state rather than the county?
15, Comments	15, Comments	Comment to Rule 15.04, subd. 3(1) requires the judge to recuse if he or she has taken a plea and allowed the defendant to withdraw that plea; the concept is not in the rules or case law so should it be in the comments? If the concept should be in the rules or comments, is it only applicable to court trials since in jury trials the judge is not the finder of fact?

Original Cite	New Cite	Issue
17.01	17.01 , subd. 1	This rule states an offense punishable by life imprisonment must be prosecuted by indictment. How does this comport with the holding in *State v. Ronquist*, 660 N.W.2d 444 (Minn. 1999), which allowed the prosecutor to proceed by complaint? *See also State v. DeWalt*, 757 N.W.2d 282 (Minn. Ct. App. 2008). Does the rule need to be amended?
17.03. subd. 3	17.03. subd. 3	What should the judge do if a defendant requests severance? What is the practical impact of this rule?
18.01, subd. 1	18.01, subd. 1	The rule requires that grand juries be drawn at least annually. Most counties do not have a need to call a grand jury, and probably do not. Should it be necessary to establish a term of service each year?
18.04	18.03	The rule defines when an attorney may be present in the grand jury room with a witness. What if a witness who is not the target of the indictment and was never given a *Miranda* warning shows up with an attorney? Is the attorney in or out of the room?
18.04	18.03	The same paragraph allowing the attorney's presence for a witness states as one of the criteria that the witness "effectively waived the privilege against self-incrimination." Should "effectively" be deleted so as to require an explicit rights waiver from the witness?
18.06, subd. 3	18.05, subd. 3	This subdivision states the grand jury may not find or return a presentment. The statute upon which this subdivision was based – 628.03 – was repealed in 1979. Should the subdivision be removed?
18.09, subd. 1	18.08, subd. 1	The rule sets a 12-month term, but states the grand jury may not be discharged in certain circumstances, including that it has not yet completed an investigation. In Hennepin County, the practice is to discharge the grand jury at the end of the term and re-present the cases not completed during the last term to the new grand jury. Should the rule allow for this practice?
20.01, subd. 4(2)(b) and 20.02, subd. 8(2)	20.01, subd. 6(b)(2) and 20.02, subd. 8(2)	Procedure for civil commitment of those who are mentally deficient is inaccurate and out of date (e.g., refers to Commissioner of Public Welfare).
20.01, subd. 4(2)(c)	20.01, subd. 6(b)(3)	This paragraph indicates the procedure for appealing a resulting commitment. Is it necessary to have this rule? Shouldn't the appeal be governed by the commitment statutes?

Original Cite	New Cite	Issue
20.02, subd. 6(b)	20.02, subd. 7	The last paragraph of this rule establishes the defendant's burden for proving the defense of mental illness or deficiency. Should the rule also explicitly require the state to establish a prima facie case?
21.05	21.05	This rule sets forth a very detailed procedure for marking and filing a deposition. Is the detail necessary? Can we reduce it down to saying the deposition must be filed?
21.06, subds. 2 and 3	21.06, subds. 2 and 3	These two subdivisions indicate how a deposition may be used as evidence. Should these standards instead be located in the Rules of Evidence? They seem out of scope for these rules.
21, comments	21, comments	Is there any authority addressing the constitutionality of the use of a deposition at trial when the defendant has not been personally notified? Would be helpful to include a cite.
22.01, subd.2	22.01, subd.2	The rule sets a standard for the caption of a grand jury subpoena. Is it representative of current practice? How are grand jury subpoenas being captioned currently? What *should* the language be?
22.01, subd. 3	22.01, subd. 3	This rule establishes a process whereby an unrepresented defendant must obtain a court order to issue a subpoena, but a represented defendant does not. Does this raise a constitutional issue?
23.03	23.03	This rule appears to require the establishment of a structured violations bureau in each county in order to take advantage of the payables list. In practice, only the larger counties have true "bureaus." Should the language requiring a violations bureau be taken out (while retaining the authority to set fines and take payment)? If a county does not have a bureau, is it precluded from establishing a local fine? Can a county without a bureau set a fine that differs from the statewide payables list? Subdivision 5 of the rule requires the establishment of local rules governing the bureau. Has anyone done that? Or can the requirement be removed?
23.05, subd. 2	23.05, subd. 2	The rule states that a defendant charged with a misdemeanor offense certified as a petty misdemeanor cannot qualify for court appointed counsel unless the offense involves moral turpitude. What offenses are covered by moral turpitude? Can that phrase be removed?
24.01	24.01	It is suggested that the structure of Rule 24 be changed so that 24.01 sets forth a general rule that an offense can prosecute in any county in which any one element of the offense occurred, and 24.02 calls out the exceptions to that rule.

Original Cite	New Cite	Issue
24.02	24.02	When an offense crosses county lines, many of the venue provisions specify one county or the other, but do not allow venue in both counties. This convention is not consistent, however. Should it be?
24.02	24.02	This rule sets forth venue in special cases. There is a need to search the statutes to see if there are any venue provisions in statute that are not in this rule. (E.g., 609.795; harassments and OFP's; contributing to the delinquency or status offense of a minor 260B; contributing to the need for protection (CHIPS) in 260C.)
24.02, subd. 5	24.02, subd. 5	This provision sets venue when an assault is committed in the state that results in a death outside of the state. It is suggested that the provision should not be limited to assault. Rather, if any crime occurs in Minnesota and results in death outside the state, there should be venue in MN.
24.02, subd. 7	24.02, subd. 7	This rule establishes venue for libel. Is libel still a crime, or is it instead a civil action?
24.03, subd. 1	24.03, subd. 1	This rule establishes the circumstances when venue can be transferred. Should it also include a provision that venue may be transferred if the defendant consents? There is a constitutional provision that says the defendant has the right to be tried in a particular county. Can venue ever be transferred over defendant's objection?
25.01 26.02, subd. 4(4) 26.03, subd. 6	25.01 26.02, subd. 4(4) 26.03, subd. 6	All three of these rules contain procedures for closing a proceeding to the public. Though each procedure relates to a different point in time during the overall criminal proceeding, the procedures are essentially the same. Would it be possible to combine the three procedures into one? Some preliminary work was done as part of the revision project to test the feasibility of this idea, but it was determined the process would require some substantive changes.
26.02, subd. 4 (3)	26.02, subd. 4 (3)	Exercise of peremptory challenges is being interpreted differently by different courts. The rule states that the parties may alternately exercise peremptory challenges. In some courts, that means the defendant (D) and prosecutor (P) alternate one challenge at a time (e.g., D then P, D then P). In other courts, it means the defendant exercises all peremptory challenges and then the prosecutor does the same. Should the rule be amended so the practice is made consistent?
26.02, subd. 4(4)(a)	26.02, subd. 4(4)(a)	This provision, relating to exclusion of the public from voir dire begins with the phrase, "[i]n those rare cases where it is necessary." Is this unnecessary commentary? Or should this language be retained to indicate a level of import?

Original Cite	New Cite	Issue
26.02, subd. 4(4)(c)	26.02, subd. 4(4)(c)	In determining whether to grant a request to close voir dire to the public, this rule requires the court to consider the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. What does the phrase "deeply personal" mean? Should this be amended to state a more definable standard?
26.02, subd. 5(1)5	26.02, subd. 5(1)(e)	This rule states a juror may be challenged based on The consanguinity or affinity within the ninth degree to certain persons involved in the case. Is this an unreasonable standard? How many people really know their relations to the ninth degree?
26.02, subd. 8	26.02, subd. 8	This rule requires alternate jurors to be discharged when the jury retires to consider its verdict. It is suggested the committee consider amending the rule to adopt the common practice of allowing alternates to rejoin the jury after beginning deliberations.
26.03, subd. 9	26.03, subd. 10	The requirement in this rule that court *must*, on motion of either party, question jurors about exposure to potentially prejudicial material seems strong. It doesn't allow the judge any discretion. Should it be changed to more permissive language?
26.03, subd.13 (3) and (6)	26.03, subd.13 (3) and (7)	In both of these rules, the chief judge is a necessary actor (paragraph (3) refers to disqualification of a judge for cause; paragraph (6) refers to assignment of a new judge when the original judge is unavailable). What if the chief judge is unavailable due to vacation, illness, or other reason? Should the rule explicitly allow the assistant chief judge to act in the chief's place? Or can this problem be handled by internal court policy?
26.03, subd. 13(4)	26.03, subd. 13(4)(c)	This paragraph states that a notice to remove is not effective against a judge who presided at trial, Omnibus Hearing, or evidentiary hearing if the removing party had notice the judge would preside at the hearing. What is the effect of this paragraph? If the court assigns a judge without notice to preside over a hearing, is the right to remove that judge from subsequent hearings preserved? This does not appear to be present practice. It may mean instead that if a judge is unexpectedly assigned (without prior notice) to a hearing, the party can file for removal immediately. But once a judge presides at an evidentiary hearing, the parties are stuck.

Original Cite	New Cite	Issue
26.03, subd. 18(3)	26.03, subd. 18(4)(a) and (f)	Paragraph (a) states that no party may claim error for any instruction not objected to before deliberation. Paragraph (f) states that objections to instructions claiming error in fundamental law or controlling principle may be included in a motion for a new trial even if not raised before deliberations. These two paragraphs are in conflict with one another. And plain error would seem to trump this bar to objection in paragraph (f). Should this section be amended?
26.03, subd. 19(1)	26.03, subd. 19(1)	The rule prohibits juries from taking depositions into deliberation. Why? If a partial deposition from another case was admitted as an exhibit, couldn't it go into the jury room (in, for example, a perjury case)? Is the rule trying to require that only transcripts of testimony in that other case can be take n to the jury room?
26.03, subd. 19(6) and (7)	26.03, subd. 19(6) and (7)	These paragraphs, relating to impeachment of the verdict and finding a partial verdict, do not explicitly mention verdicts on the aggravated sentence portion of the trial. Should they be amended to be more explicit?
26.04, subd. 1	26.04, subd. 1	The rule lists prosecutorial misconduct as a potential basis for a new trial. It is suggested the committee consider amending the rule to adopt the Minnesota County Attorneys Association's position that prosecutorial misconduct is prosecutorial error.
26.04, subd. 1(2)	26.04, subd. 1(b)	This rule states that a motion for a new trial must be based on the record. It also provides that pertinent facts that are not in the record may be submitted by affidavit, except as otherwise provided by these rules. Is the court free to accept evidence in support of the motion to other than the existing record? The rule doesn't seem to provide for other evidence to be submitted (limited to submitting facts by affidavit), and the phrase "except as otherwise provided by these rules" is unclear.
27	27	By statute (609.02, subd. 5), a conviction occurs upon acceptance and recording by the court of a guilty plea or verdict. The term conviction as used in this rule is not always consistent with that definition. Should the rule clarify exactly when conviction occurs, and how sentencing fits into that definition?
27.03, subd. 1(A)	27.03, subd. 1(B)	In felony cases, Minn. Stat. § 609.115 requires the court to order a PSI. The rule is permissive ("may"). Is there a reason for the conflict?

Original Cite	New Cite	Issue
Rule 27.03, subd. 1(A)(4)	Rule 27.03, subd. 1(B)(3)	Should we clarify whether the court must provide notice that it is considering a mitigated departure in writing or on the record? The underlying concern is that if the court does not provide adequate notice, the parties may not be prepared at sentencing and will have to request a continuance.
27.03, subd. 6(B)(3)	27.03, subd. 7(3)	This rule sets forth the required content of the sentencing order. Should there be a requirement to account for charges the court will not sentence because the court is imposing sentence on the higher of several charges related to a single behavioral incident?
27.03, subd. 7	27.03, subd. 8	The concept of a judgment of conviction is antiquated (based on past practice of keeping physical judgment rolls). Should this subdivision be reworked to reflect the current practice?
27.04, subd. 3(2)	27.04, subd. 3(2)(b)	When a probation violation is found, this rule establishes a procedure for continuing the sentence or stay as pronounced and continuing or amending the conditions of probation. There is, however, no procedure for continuing a stay of adjudication. This is because the rules do not currently recognize stays of adjudication. Should the rule be amended to include stays of adjudication?
27.05, subd. 8	27.05, subd. 7	This rule addresses termination of a pretrial diversion agreement. The rule states the court can dismiss the charges and prohibit further prosecution. The implication is the same charge cannot be prosecuted again. Should the court be able to prohibit prosecution for the same behavioral incident rather than offense charged? The former provides more protection against further prosecution.
28	28	In several locations throughout the rules, the rule refers to the filing of a statement of the case. This doesn't seem to comport with practice. Only the state public defender is currently exempted from doing this. Should the rule be amended to reflect current practice?
28.02, subd. 2(3) and 28.02, subd. 3	28.02, subd. 2(3) and 28.02, subd. 3	The rule states that appeal of a gross misdemeanor or misdemeanor sentence is a discretionary appeal (meaning the court of appeals uses the "interests of justice" standard to determine whether to take the appeal). Is this procedure fair? Should there be objective criteria so that some of the appeals will be as a matter of right?
28.02, subd. 3	28.02, subd. 3	The last line of the discretionary appeals rule states that Minnesota Rule of Civil Appellate Procedure 105 governs the procedure for the appeal. But in Rule 28.01, subd. 2, there is already a general rule that Civil Appellate procedure applies unless these rules state otherwise. Is it really necessary to refer to the Civil Appellate Rules in this section?

Original Cite	New Cite	Issue
28.02, subd. 5(10) and (11)	28.02, subd. 5(10) and (11)	Within the IFP procedures, these provisions require appointment of the State Public Defender and payment by that office of any necessary transcripts "regardless of where the offense occurred." The language about where the offense occurred is no longer necessary because it dates back to county public defenders.
28.02, subd. 7(3)	28.02, subd. 7(3)	The rule allows the defendant to request pretrial release from the appellate court if, during the pendency of appeal, the district court has denied release. Should the language be amended to reflect the practice of the court of appeals not to have individual judges consider requests for release pending appeal but to submit them to three-judge panels? How does this process work at the Supreme Court level?
28.02, subd. 7(3)	28.02, subd. 7(3)	In *State v. Johnson*, 447 N.W.2d 605 (Minn. Ct. App. 1989), the court held that this rule does not provide for emergency consideration of a request for release. Should the rule be amended to provide for that?
28.02, subd. 12	28.02, subd. 12	The rule states that if the court of appeals affirms the judgment of the district court it must "direct execution of the sentence." In practice, the court of appeals says only "decision affirmed" without reference to executing the sentence. Should this language be dropped from the rule as unnecessary?
28.02, subd. 13	28.02, subd. 13	The rule states that if the appellate court denies oral argument the case is deemed submitted as of date the court notifies the parties. In practice, the submission date does not occur until the non-oral conference date. Should the rule be amended to reflect current practice?
28.03	28.03	Within the procedure to certify a question to the court of appeals, what does the phrase "report the case" mean? Write it up? Or rule on the motion or issue? Is there case law on this?
28.04, subd. 2(2)	28.04, subd. 2(2)	The procedure governing appeal of a pretrial order requires a showing of critical impact. But pre-trial discovery orders can be appealed and are not subject to this test. Should the rule refer to this exception? Is the law on critical impact clear enough to make this part of the rule?
28.04, subd. 2(2)	28.04, subd. 2(2)	This rule requires service of the appeal on the State Public Defender based on the outcome in *State v. Barrett*, 694 N.W.2d 783 (Minn. 2005). But is it necessary to give notice to the state public defender of appeals when the defendant was represented by a private attorney in the underlying case?

Original Cite	New Cite	Issue
28.04, subd. 2(8)	28.04, subd. 2(8)	This rule states that an appeal of a pretrial order must be taken within 5 days after the defense or the court administrator serves notice of entry of the order on the prosecutor, or within 5 days after the district court notifies the prosecutor in court on the record of the order, whichever occurs first. But the court in *State v. Wollan*, 303 N.W.2d 253 (Minn.1981) held that a timely, good-faith motion by the prosecutor for clarification or rehearing of an appealable order extends the time to appeal from that order. Should the holding from *Wollan* be stated expressly in the rules?
28.04, subd. 6(1); 7(1); 8(1); 29.03, subd. 1	28.04, subd. 6(1); 7(1); 8(1); 29.03, subd. 1	Both rules include a statement that the defendant is not required to post bond to appeal. The language appears to be outdated. Can it be removed?
28 and 29	28 and 29	Why are IFP procedures in the rules? It seems like an administrative determination rather than a rule of procedure. At the very least, should the IFP procedure be broken out so that it stands alone?
28 and 29	28 and 29	Should we eliminate informal letter briefs? This is not permitted in substance; the briefs must still be bound.
30.01	30.01	When a prosecutor dismisses a complaint or indictment, this rule requires the prosecutor to state the reasons for dismissal in writing or on the record. Is it constitutional to require this? Does this raise a separation of powers issue? If the prosecutor does re-file a complaint that has been dismissed, it should be noted on the complaint.
31	31	This rule seems to be dangling without a home. Does it fit within another rule? Should we develop a fundamental principles rule, and include this in it?
33.02	33.02	The last sentence of this rule does not seem to have any meaning because it essentially allows for service however it is required to be served in that instance. Should this sentence be removed?
33.02	33.02	The rule should include language permitting service on the defendant if the defendant is pro se without having to request permission to do so from the court.
33.04	33.04	Provisions for sealing search warrants do not include an end time. Should the rule include an end time – pull from 626A?

Original Cite	New Cite	Issue
33.04(e)	33.04(e)	If the prosecutor requested an order allowing the search warrant not to be filed because it might cause arrestees to flee or otherwise impact the search, paragraph (e) requires the search warrant to be filed once an arrest has been made. It could be problematic to make the search warrant public if the search warrant relates to multiple defendants but only one defendant is arrested. Should the rule be amended to account for this situation?
36	36	It appears this rule was intentionally written to be onerous so that it would rarely be used. Does the committee want to consider writing a rule that allows for submission of a warrant and authorization electronically or by phone (as long as recorded)?