STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

PROMULGATION OF AMENDMENTS TO
THE RULES OF CRIMINAL PROCEDURE **ORDER**

WHEREAS, the Supreme Court Advisory Committee on Rules of Criminal Procedure has submitted a report and recommended certain amendments to the Rules of Criminal Procedure, and

WHEREAS, the Supreme Court held a hearing on the proposed amendments on April 19, 1994, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Rules of Criminal Procedure be, and the same hereby are, prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota.

2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

3. The Advisory Committee shall continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the court from time to time.

4. These amendments to the Rules of Criminal Procedure shall govern all criminal actions commenced or arrests made after 12 o'clock midnight July 1, 1994, except that the amendments in the first sentence of the third paragraph in Rule 2.01 shall govern all criminal actions commenced or arrests made after 12 o'clock midnight January 1, 1995.

5. Forms D, E, and G of the Mandatory Felony and Gross Misdemeanor Complaint and Indictment Forms are deleted effective 12:00 o'clock midnight January 1, 1995.

DATED: May 9, 1994

BY THE COURT:



A.M. Keith
Chief Justice

# AMENDMENTS TO THE

# RULES OF CRIMINAL PROCEDURE

**May 9, 1994**

## RULE 1.02. PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just speedy determination of criminal proceedings without the purpose or effect of discrimination based upon race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, handicap 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."

## RULE 1.03. LOCAL RULES BY DISTRICT COURT

Any court may recommend rules governing its practice not in conflict with these rules or with the General Rules of Practice for the District Courts and those rules shall become effective as ordered by the Supreme Court."

**Comments on Rule 1.02.**

Add the following two paragraphs at the end of the existing comments on Rule 1:

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 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.

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 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 2.01. CONTENTS; BEFORE WHOM MADE**

The complaint is a written signed statement of the essential facts constituting the offense charged.

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

Except as provided in Rules 6.01, subd. 3, 11.06 and 15.08, the facts establishing probable cause to believe that an offense has been committed and that the defendant committed it shall be set forth ~~separately~~ in writing in ~~or with~~ the complaint, ~~or in supporting affidavits,~~ and may be supplemented by supporting affidavits or by sworn testimony of witnesses taken before the issuing judge or judicial officer. If ~~such~~ sworn testimony is taken, a note so stating shall be made on the face of the complaint by the issuing officer. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed. Upon the information presented, the judge or judicial officer shall determine whether there is probable cause to believe that an offense has been committed and that the defendant committed it. When the offense alleged to have been committed is punishable by fine only, the determination of probable cause may be made by the clerk or deputy clerk of court if authorized by court order.

Any complaint, supporting affidavits, or supplementary sworn testimony ~~required by this rule to be~~ 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."

**Comments on Rule 2.**

Amend the third, fourth, and fifth paragraphs of the comments on Rule 2 as follows:

Except as provided in Rules 11.06 and 15.08 authorizing the substitution of a new complaint to permit a plea to a misdemeanor or different offense, the complaint shall be ~~made on oath~~ 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 ~~complaint may also be made on oath before~~ determination of probable cause may be made by a clerk or deputy clerk of court if court ~~rule~~ 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 ~~rule~~ order in Rule 2.01, this provision is consistent with ~~present~~ 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 ~~The~~ probable cause statement shall be set forth separately in ~~or with~~ the complaint ~~or in supporting affidavits~~, and the complaint ~~or the supporting affidavits~~ may be supplemented by supporting affidavits or sworn recorded testimony. If affidavits, testimony, or other reports are used to supplement the complaint, it is still necessary to include in the complaint a statement of the facts establishing probable cause. Under this rule it is permissible, for the complaint and any supporting affidavits to be sworn to before a clerk, deputy clerk or notary public. The documents may then be submitted to the judge or judicial officer by any of the methods permitted under the rule and the law enforcement officer or 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 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 3.01. ISSUANCE**

If it appears from the facts set forth ~~separately~~ in writing in ~~or with~~ the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that the defendant committed it, a summons or warrant shall be issued. A summons shall be issued rather than a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to a summons, or the defendant's whereabouts is not reasonably discoverable, or the arrest of the defendant is necessary to prevent imminent harm to the defendant or another. If issued, a warrant for the arrest of the defendant shall be issued to any person authorized by law to execute it~~, or a summons for the appearance of the defendant shall issue in lieu thereof~~.

The warrant or summons shall be issued by a judge or judicial officer of the district court. Provided that when the offense is punishable by fine only, the clerk or deputy clerk of court may also issue the summons when authorized by court ~~rule~~ order.

When the offense is punishable by fine only, in misdemeanor cases, a summons shall be issued in lieu of a warrant.

~~For all other misdemeanors, a summons shall be issued rather than a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to a summons, or the whereabouts of the defendant is unknown, or the arrest of the defendant is necessary to prevent imminent bodily harm to the defendant or another.~~

The issuing officer ~~may issue a summons instead of a warrant whenever satisfied that a warrant is unnecessary to secure the appearance of the defendant, and~~ shall issue a summons whenever requested to do so by the prosecuting attorney authorized to prosecute the offense charged in the complaint.

If a defendant fails to appear in response to a summons, a warrant shall issue."

**Rule 3.02, Subd. 1. Warrant.**

Subd. 1. Warrant. The warrant shall be signed by the issuing officer and shall 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 describe the offense charged in the complaint, and the warrant and complaint may be combined in one form. ~~For felonies and gross misdemeanors, the amount of bail and other conditions of release may be set by the issuing officer and endorsed on the warrant.~~ For ~~misdemeanors~~ all offenses, the amount of bail shall and other conditions of release may be set by the issuing officer and endorsed on the warrant."

**Comments on Rule 3.**

Amend the first paragraph of the comments on Rule 3 as follows:

When probable cause in accordance with Rule 2.01 appears from the evidence set forth ~~separately~~ in ~~or with~~ 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, Pre-Trial Release 3.1 (Approved Draft, ~~1968~~ 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)), ~~present~~ Minnesota statutory law ~~has~~ had no provision for issuance of a summons in lieu of a warrant.

**Comments on Rule 3.**

Amend the comments on Rule 3 by adding the following new paragraph after the existing first paragraph:

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."

Amend the existing third, fourth, and fifth paragraphs of the comments on Rule 3 as follows:

Additionally, a summons ~~may be issued in any case whenever the issuing officer is satisfied that a warrant is unnecessary to secure the appearance of the defendant and~~ shall be issued if the prosecuting attorney requests it. ~~A summons may be issued, therefore, although the prosecuting~~

~~attorney has requested a warrant, but shall be issued if the prosecuting attorney requests a summons.~~

~~Where the defendant is charged with a misdemeanor offense punishable upon conviction by incarceration and not just by a fine, the issuing officer must still 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 cannot be located, or the arrest of the defendant is necessary to prevent bodily harm to the defendant or another. This standard is consistent with that in Rule 6 governing the mandatory issuance of citations for misdemeanors in lieu of making an arrest, and is taken substantially from ABA Standards, Pre Trial Release 3.2 (Approved Draft, 1968).~~ See also 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.

~~For felonies and gross misdemeanors, Rule 3.01 does not prescribe specific standards that shall govern the decision of whether to issue a summons, but leaves the determination to the discretion of the issuing officer and prosecuting attorney.~~ 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 exercising this discretion in felony and gross misdemeanor cases, the issuing officer or prosecuting attorney may take into account the nature and circumstances of the offense, the defendant's residence, employment, family relationships, past history of response to legal process, and criminal record. (See ABA Standards, Pre Trial Release 3.3(b) (Approved Draft, 1968).)~~ In overcoming the presumption for issuing a summons rather than a warrant, the 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.

Amend the sixth sentence of the existing eighth paragraph of the comments on Rule 3 as follows:

In ~~misdemeanors~~ all cases, the issuing officer must set and endorse on the warrant the amount of bail which the defendant may pay to obtain release.

**Rule 4.02, Subd. 5(3) Complaint or Tab Charge; Misdemeanors; Gross Misdemeanors Charged Under Minn. Stat. § 169.121 or Minn. Stat. § 169.129.**

Amend this rule as follows:

(3) Complaint or Tab Charge; Misdemeanors; Gross Misdemeanors Charged Under Minn. Stat. § 169.129 or Minn. Stat. § 169.129. If there is no complaint made and 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 under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the clerk shall enter upon the records a brief statement of the offense charged including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. This brief statement shall be a substitute for the complaint and is referred to as a tab charge in these rules. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint shall be made and filed. If the defendant has not already pled guilty and a complaint ~~is so requested~~ has not been made and filed in a gross misdemeanor case charged under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, ~~the appearance under Rule 5 shall be~~

~~continued pending the issuance of the complaint~~ the complaint shall 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. Service of such a gross misdemeanor complaint shall be as provided by Rule 33.02 and may include service by U. S. mail. ~~Such~~ In a misdemeanor case, the complaint shall be made and filed within 48 hours after the demand therefor if defendant is in custody or within thirty (30) days of such demand if the defendant is not in custody. If no valid complaint has been made and filed within the time required by this rule, the defendant shall be discharged, the proposed complaint, if any, and any supporting papers shall not be filed, and no record shall 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 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 be arraigned. When a charge has been dismissed for failure to file a valid complaint and a valid complaint is thereafter filed, a warrant shall 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.

**Comments on Rule 4.02, Subd. 5(3).**

Amend the fourth sentence of the seventh paragraph of the comments on Rule 4 as follows:

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.

Amend the eighth paragraph of the comments on Rule 4 as follows:

"~~Unless a complaint is requested,~~ Rule 4.02, subd. 5(3) permits the use of a tab charge to initiate a prosecution for a gross misdemeanor ~~driving while intoxicated~~ charged under Minn. Stat. § 169.121 or Minn. Stat. § 169.129. The provisions concerning tab charges were extended to gross misdemeanor driving while intoxicated 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, 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 tab charges should get such cases into court promptly. ~~A defendant who wants a complaint may then request it. Otherwise, the proceedings may continue based on the tab charge.~~ However, the complaint must be made, served and filed within the time limits as specified in the rule unless the defendant has entered a guilty plea before then. All other 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 gross misdemeanor prosecutions under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 is the same as for gross misdemeanor prosecutions under any other statute. ~~If a complaint is requested the appearance under~~

~~Rule 5 is continued pending issuance of the complaint. The time limit specified in Rule 5.03 for having the initial appearance under Rule 8 does not then begin to run until the complaint is filed.~~ 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. ~~If a valid complaint is filed or if no complaint is requested, the proceedings continue on under Rule 5 and Rule 8.~~ See Rule 17.06, subd. 4(3) as to any restrictions or bars on further prosecution after such a dismissal.

Amend the first sentence of the tenth paragraph of the comments on Rule 4 as follows:

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.

Amend the third sentence of the eighteenth paragraph of the comments on Rule 4 as follows:

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 ~~need only be issued later if requested by the defendant.~~

**RULE 5.01. STATEMENT TO THE DEFENDANT**

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 in communication if, (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 defense. If a defendant is handicapped in communication, the judge or judicial officer shall appoint a qualified interpreter to assist the defendant throughout the proceedings. The proceedings at which a qualified interpreter is required are all those covered by these rules which are 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 cases of felonies and gross misdemeanors, the defendant shall not be called upon to plead.

The judge, judicial officer, or other duly authorized personnel shall advise the defendant substantially as follows:

(a) That the defendant is not required to say anything or submit to interrogation and

that anything the defendant says may be used against the defendant in this or any subsequent proceeding;

(b) That the defendant has a right to counsel in all subsequent proceedings, including police line-ups and interrogations, and if the defendant appears without counsel and is financially unable to afford counsel, that counsel will forthwith be appointed without cost to the defendant charged with an offense punishable upon conviction by incarceration.

(c) That the defendant has a right to communicate with defense counsel and that a continuance will be granted if necessary to enable defendant to obtain or speak to counsel;

(d) That the defendant has a right to a jury trial or a trial to the court;

(e) That if the offense is a misdemeanor, the defendant may either plead guilty or not guilty, or demand a complaint prior to entering a plea;

(f) That if the offense is a gross misdemeanor punishable under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, ~~the defendant may demand a complaint prior to entering a plea~~ 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.

The judge, judicial officer, or other duly authorized personnel may advise a number of defendants at once of these rights, but each defendant shall be asked individually before arraignment whether the defendant heard and understood these rights as explained earlier.

**Comments on Rule 5.01.**

Amend the comments on Rule 5 by adding the following new paragraph after the existing second paragraph:

Rule 5.01 requires the appointment of a qualified interpreter for a defendant handicapped 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). 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 is the same as that contained in Minn. Stat. § 611.31 (1992). Minn. Stat. § 611.33 (1992) should be referred to for the definition of qualified interpreter.

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

Amend this rule as follows:

Subd. 3. Form of Citation. A citation shall direct the accused to appear before a designated court or violations bureau at a specified time and place or to contact the court or violations bureau to schedule an appearance. The citation shall state that if the defendant fails to appear at or contact the court or violations bureau as directed in response to the citation, a warrant of arrest may issue. A summons or warrant issued because of a defendant's failure to respond to a citation may be based

upon sworn facts establishing probable cause as set forth in or with the citation and attached to the complaint.

**Comments on Rule 6.01, Subd. 3.**

Amend the comments on Rule 6 by adding the following language at the end of the existing tenth paragraph:

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 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.

**Comments on Rule 6.02.**

Amend the twentieth paragraph of the comments on Rule 6 by adding the following language at the end of that paragraph:

If the ten percent cash option is authorized by the trial 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 should consider the availability of a reliable person, to help assure the appearance of the defendant. If cash bail is deposited with the court it is deemed to be the property of the defendant pursuant to Minn. Stat. § 629.53 (1993) and according to that statute the court may apply the deposit to any fine or restitution imposed.

Amend the comments on Rule 6 by adding the following new paragraph after the existing twenty-third paragraph:

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 7.02. Notice of Additional Offenses.**

Amend the second sentence of this rule as follows:

In cases of felonies and gross misdemeanors, the notice shall be given at or before the Omnibus Hearing under Rule 11 or as soon ~~thereafter~~ after the Omnibus Hearing as the offenses become known to the prosecuting attorney.

**Comments on Rule 7.01.**

Amend the first paragraph of the comments on Rule 7 by adding the following sentence at the end of that paragraph:
It is permissible for the prosecuting attorney to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.

**RULE 8.01. PLACE OF APPEARANCE AND ARRAIGNMENT**

The defendant's initial appearance following the complaint or, for a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, a tab charge under this rule shall be held in the district court of the judicial district where the alleged offense was committed.

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 defendant shall be arraigned upon the complaint or the complaint as it may be amended or, for gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the tab charge, but may only enter a plea of guilty at that time. If the defendant does not wish to plead guilty, no other plea shall be called for and the arraignment shall be continued until the Omnibus Hearing when pursuant to Rule 11.10 the defendant shall plead to the complaint or the complaint as amended ~~or such tab charge~~ or be given additional time within which to plead. If the 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 presentation of the case to the grand jury shall 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 be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under Rule 11 shall be held as provided by Rule 19.04, subd. 5.

**Comments on Rule 8.**

Amend the first paragraph of the comments on Rule 8 by adding the following language at the end of that paragraph:

Under Rule 4.02, subd. 5(3) a prosecution for a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 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 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.

**Rule 11.04. Other Issues.**

Amend the last paragraph of this rule as follows:

If the defendant intends to offer evidence of a victim's previous sexual conduct in a

prosecution for violation of Minn. Stat. § 609.342 to 609.346, a motion shall be made pursuant to the procedures prescribed by Rule ~~404(c)~~ 412 of the Minnesota Rules of Evidence.

**RULE 11.06. PLEAS**

At the hearing the defendant may be permitted to plead to the offense charged in the complaint ~~or, for a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the tab charge~~ or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15.

**Rule 11.10. Plea; Trial Date.**

Amend the first sentence of this rule as follows:

If the defendant is not discharged the defendant shall plead to the complaint ~~or, for gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the tab charge~~ or be given additional time within which to plead.

**Comments on Rule 11.06.**

Amend the sixteenth paragraph of the comments on Rule 11 as follows:

Under Rule 11.06 the defendant at the Omnibus Hearing may plead to the complaint or indictment ~~or, for gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the tab charge~~ 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.

**Comments on Rule 11.10.**

Amend the twenty-first paragraph of the comments on Rule 11 as follows:

A defendant who is not discharged following the Omnibus Hearing shall plead to the indictment or complaint ~~or, for gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the tab charge~~ in the district court or be given additional time within which to plead. If the defendant pleads not guilty, a trial date shall be set. (Rule 11.10.)

**Comments on Rule 13.**

Amend the last two sentences of the first paragraph of the comments on Rule 13 as follows:

~~In the case of gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129, the arraignment under Rule 13 shall be held within 14 days after the tab charge is entered or within 14 days after the complaint, if any, is filed. (Rules 4.02, subd. 5(3) and 5.03).~~ 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.

**Rule 15.01. Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases.**

Amend provision number 1 in this rule to read as follows:

1. Name, age and date and place of birth and whether the defendant is handicapped in communication and, if so, whether a qualified interpreter has been provided for the defendant.

**Rule 15.03, Subd. 1. Group Warnings.**

Amend this rule as follows:

Subd. 1. Group Warnings. The court may advise a number of defendants at once as to the consequences of a plea and as to their constitutional rights as specified in questions 2, 3 and 4 above. Before ~~When~~ such a procedure is followed the court shall first determine whether any defendant is handicapped in communication. If so, the court must provide the services of a qualified interpreter to any such defendant and should provide the warnings contemplated by this rule to any such defendant individually. The court's statement in a group warning shall be recorded and each defendant when called before the court shall be asked whether the defendant heard and understood the statement. The defendant shall then be questioned on the record as to the remaining matters specified in Rule 15.02.

**RULE 15.09. RECORD OF PROCEEDINGS**

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

**Rule 15.11. Use of Guilty Plea Petitions When Defendant Handicapped in Communications.**

Amend Rule 15 by adding a new Rule 15.11 as follows:

RULE 15.11. USE OF GUILTY PLEA PETITIONS WHEN DEFENDANT HANDICAPPED IN COMMUNICATIONS

In all cases in which a defendant is handicapped in communication because of difficulty in speaking or comprehending the English language, the court may 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 to insure that the defendant understands all rights being waived, the nature of the proceedings, and the petition.

**Comments on Rule 15.01.**

Amend the comments on Rule 15 by adding the following two sentences at the end of the second paragraph:

Rule 15.01 also differs in its requirement that the court make certain that a defendant handicapped in communication has a qualified interpreter. This comports with the general requirement for interpreter services 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.

**Comments on Rule 15.03.**

Amend the existing sixth through seventh sentences of the eighth paragraph of the comments on Rule 15 as follows:

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 defendant heard and understood the earlier statement by the court.

**Comments on Rule 15.**

Amend the comments on Rule 15 by adding the following paragraph at the end of the existing comments:

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 in communication due to difficulty in speaking or comprehending English, a multilingual guilty plea petition be used which would be both in English and 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 contains only the language other than English.

**Rule 17.01. Prosecution by Indictment, Complaint or Tab Charge.**

Amend the last sentence of the first paragraph of this rule as follows:

Misdemeanors and gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 may also be prosecuted by tab charge, provided that for any such gross misdemeanors, a complaint shall be subsequently made, served and filed as required by Rule 4.02, subd. 5(3).

**Rule 17.02, Subd. 5. Indictment and Complaint Forms - Felony and Gross Misdemeanors.**

Amend this rule as follows:

Subd. 5. Indictment and Complaint Forms - Felony and Gross Misdemeanors. For all indictments and complaints charging a felony or gross misdemeanor offense the prosecuting attorney or such judge or judicial officer authorized by law to issue process pursuant to Rule 2.02 shall use an appropriate form authorized and supplied by the State Court Administrator or a word processor-produced complaint or indictment form in compliance with the supplied form and approved by Information Systems Office, State Court Administration. If for any reason such form is unavailable, failure to comply with this rule shall constitute harmless error under Rule 31.01.

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

Amend the last sentence of this rule as follows:

In misdemeanor cases and also in gross misdemeanor cases under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 dismissed for failure to file a timely complaint within the ~~thirty (30) day time limit pursuant to~~ time limits as provided by Rule 4.02, subd. 5(3), further prosecution shall not be barred unless additionally a judge or judicial officer of the court has so ordered.

**Comments on Rule 17.01.**

Amend the third paragraph of the comments on Rule 17 as follows:

Under Rule 17.01, a misdemeanor and also a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129 may be prosecuted by complaint or by tab charge (See Rule 4.02, subd. 5(3)) under these rules. However for any such 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 prosecuted by indictment and, in such cases, rules applicable to indictments shall apply.

**Rule 18.04. Who May be Present.**

Amend the first sentence of this rule to read as follows:

Attorneys for the State, the witness under examination, qualified interpreters ~~when needed~~ for witnesses handicapped in communication, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

**Comments on Rule 18.04.**

Amend the thirteenth paragraph of the comments on Rule 18 as follows:

Rule 18.04 also permits the presence of the following: qualified interpreters ~~when needed~~ 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 21.01. When Taken.**

Amend last sentence of this rule as follows:

The order shall also direct the defendant to be present at the taking of the deposition and, if the defendant is handicapped in communication, that a qualified interpreter be present for the defendant.

**Comments on Rule 21.01.**

Amend the comments on Rule 21 by adding the following sentence at the end of the second paragraph:

The requirement that a qualified interpreter be present for defendants handicapped in communication is based upon Rule 5 and Minn. Stat. §§ 611.31-611.34 (1992).

**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. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion then residing therein. Additionally, a subpoena may 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 in advance.

**Comments on Rule 22.03.**

Amend the eighth paragraph of the comments on Rule 22 as follows:

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.

**Rule 26.02, Subd. 6. Peremptory Challenges.**

Subd. 6. Peremptory Challenges. If the offense charged is punishable by life imprisonment the defendant shall be entitled to 15 and the state to 9 peremptory challenges. For any other offense, the defendant shall be entitled to 5 and the state to 3 preemptory challenges. If there is 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 peremptory challenges

shall be correspondingly increased. All peremptory challenges shall be exercised out of the hearing of the jury panel.

**Rule 26.02, Subd. 6a. Objections to Peremptory Challenges.**

Amend Rule 26.02 by adding a new subdivision 6a as follows:

Subd. 6a. Objections to Peremptory Challenges.

(1) Rule. No party may engage in purposeful discrimination on the basis of race in the exercise of peremptory challenges.

(2) Procedure. Any party, or the court, may object to the exercise of a peremptory challenge on the ground of purposeful racial discrimination at any time before the jury is sworn to try the case. The objection and all arguments thereon shall be heard out of the hearing of the jury panel and the individual jury panel member involved. A record shall be made of all proceedings upon the objection. All issues of law or fact arising upon the objection shall be tried and determined by the court as promptly as possible, but in all events it shall be done before the jury is sworn to try the case.

(3) Determination. The trial court shall use a three-step process for evaluating a claim that any party has engaged in purposeful racial discrimination in the exercise of its peremptory challenges:

(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. If the objection was raised by the court on its own initiative then the court must initially determine, after such hearing as it deems appropriate, that there is a prima facie showing that the responding party has exercised its peremptory challenges on the basis of race. If no prima facie showing is found, the objection shall be overruled.

(b) Second, if the court determines that a prima facie showing has been made, the burden shifts to the responding party to articulate a race-neutral explanation for exercising the peremptory challenge(s) in question. If no race-neutral explanation is made, the objection shall be sustained.

(c) Third, if the court determines that the explanation is race-neutral, the burden of proving purposeful discrimination then shifts back to the objecting party, who will then have the opportunity to prove that the proffered reasons are pretextual. If the objection was initially raised by the court, it shall determine, after such hearing as it deems appropriate, whether the peremptory challenge was exercised in a purposeful discriminatory manner on the basis of race. If purposeful discrimination is found the objection shall be sustained. If no purposeful discrimination is found the objection shall be overruled.

(4) Remedies. If the objection is overruled the jury panel member against whom the peremptory challenge was exercised shall be excused. If the objection is sustained, the court shall 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:

(a) Disallow the discriminatory peremptory challenge and resume jury selection with the challenged 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.

**Rule 26.03, Subd. 1(1) Presence Required.**

(1) Presence Required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. If the defendant is handicapped in communication, a qualified interpreter for that defendant shall also be present at each of these proceedings.

**Rule 26.03, Subd. 1(2) Continued Presence Not Required.**

Amend this rule by adding a new part 4 at the end of the existing rule as follows:

4. The court in its discretion and upon agreement of the defendant may allow the participation by 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.

**Rule 26.03, Subd. 17. Motion for Judgment of Acquittal.**

Amend parts (2) and (3) of this rule as follows:

(2) Reservation of Decision on Motion. If the defendant's motion is made at the close of the evidence offered by the prosecution, the court may not reserve decision of the motion. If the defendant's motion is made at the close of all the evidence, the court may reserve decision 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. If the defendant's motion is granted after the jury returns a verdict of guilty, the court shall make written findings specifying its reasons for entering a judgment of acquittal.

(3) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 15 days after the jury is discharged or within such further time as the court may fix during the 15-day period. 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. If no verdict is returned, the court may enter judgment of acquittal. Such a motion is not barred by defendant's failure to make a similar motion prior to the submission of the case of the jury.

**Rule 26.04, Subd. 2. Motion to Vacate Judgment.**

Subd. 2. Motion to Vacate Judgment. The court 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 jurisdiction of the offense charged. The motion shall be made within 15 days after verdict or finding of guilty or after plea of guilty, or within such time as the court may fix during the 15-day period. If the motion is granted, the court shall make written findings specifying its reasons for vacating the judgment and dismissing the case.

**Comments on Rule 26.**

Amend the third paragraph of the comments on Rule 26 as follows:

Since misdemeanors in Minnesota are punishable by no more than 90 days of incarceration or a ~~$500~~ fine or both (Minn. Stat. § 609.03, subd. 3) there would usually be no federal constitutional right to a jury trial on a misdemeanor.

**Comments on Rule 26.02, Subd. 4(1).**

Amend the twenty-first paragraph of the comments on Rule 26 as follows:

Rule 26.02, subd 4(1) (Purpose of Voir Dire Examination--By Whom Made). The provision of this rule governing the purpose for which voir dire examination shall 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 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. 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.

**Comments on Rule 26.02, Subd. 6a.**

Amend the comments on Rule 26 by adding the following new paragraph after the existing thirty-first paragraph of those comments:

Rule 26.02, subd. 6a (Objections to Peremptory Challenges) is intended to adopt and implement the equal protection prohibition against purposeful racial discrimination in the exercise of peremptory challenges established in Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986) and subsequent cases. In applying this rule, the bench and bar should thoroughly familiarize themselves with the case law which 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; Ford v. Georgia, ___ U.S. ___, 111 S.Ct. 850 (1991); Powers v. Ohio, ___ U.S. ___, 111 S.Ct. 1364 (1991); Hernandez v. New York, ___ U.S. ___, 111 S.Ct. 1859 (1991); Edmonson v. Leesville Concrete Co., ___ U.S. ___, 111 S.Ct. 2077 (1991) Georgia v. McCollum, ___ U.S. ___, 112 S.Ct. 2348 (1992); 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).

**Comments on Rule 26.03, Subd. 1(1).**

Amend the thirty-fourth paragraph of the comments on Rule 26 as follows:

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 Rule 5.01 and Minn. Stat. §§ 611.31-611.24 (1992).

**Comments on Rule 26.03, Subd. 1(3).**

Amend the comments on Rule 26 by adding the following new paragraph after the existing thirty-sixth paragraph concerning Rule 26.03, subd. 1(3):

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 27.03, Subd. 2. Defendant's Presence at Hearing and Sentencing.**

Subd. 2. Defendant's Presence at Hearing and Sentencing. Defendant must be personally present at the sentencing hearing and at the time sentence is pronounced except when excused pursuant to Rule 26.03, subd. 1(3). If the defendant is handicapped in communication, a qualified interpreter for the defendant must also be present. Sentence may be pronounced against a corporation in the absence of counsel if counsel fails to appear on the date of sentence after reasonable notice thereof.

**Rule 27.04, Subd. 2. First Appearance.**

Amend the introductory paragraph of subdivision 2 of this rule as follows:

(1) Advice to Probationer. A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be advised of the nature of the violation charged. Prior to doing this, the judge, judicial officer, or other duly authorized personnel shall determine whether the probationer is handicapped in communication and, if so, appoint a qualified interpreter to assist the probationer throughout the probation violation proceedings. 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. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

**Rule 27.05. Pretrial Release.**

Amend the title of this rule as follows:

RULE 27.05. PRETRIAL ~~RELEASE~~ DIVERSION

**Comments on Rule 27.**

Amend the comments on Rule 27 by adding the following new paragraph after the existing eighth paragraph:

The Advisory Committee 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 may later be included with any presentence investigation report required under Rule 27.03, subd. 1.

**Comments on Rule 27.03, Subd. 2.**

Amend the sixteenth paragraph of the comments on Rule 27 as follows:

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).

**Comments on Rule 27.05.**

Amend the second paragraph from the end of the comments on Rule 27 by adding the following sentence after the existing first sentence in that paragraph:

The interpreter requirement is based upon Rule 5 and Minn. Stat. §§ 611.31-611.34 (1992).

**Rule 28.04, Subd. 1. Right of Appeal.**

Subd. 1. Right of Appeal. The prosecuting attorney may appeal as of right to the court of Appeals:

(1) in any case, from any pretrial order of the trial court except an order dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or an order dismissing a complaint pursuant to Minn. Stat. § 631.21; and

(2) in felony cases from any sentence imposed or stayed by the trial court; and

(3) in any case, from an order granting postconviction relief under Minn. Stat. Ch. 590; and

(4) in any case, from a judgment of acquittal by the trial court entered after the jury returns a verdict of guilty under Rule 26.03, subd. 17(2) or (3); and

(5) in any case, from an order of the trial court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 2.

**Rule 28.04. Appeal by Prosecuting Attorney.**

Amend this rule by adding a new subdivision 7 as follows:

Subd. 7. Procedure Upon Appeal from Judgment of Acquittal or Vacation of Judgment After a Jury Verdict of Guilty.

(1) Service and Filing. An appeal shall be taken by filing a notice of appeal with the clerk of the appellate courts together with proof of service on the opposing counsel, the clerk 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 Minnesota. No fees or bond for costs shall be required for the appeal. Unless otherwise ordered by the appellate court, a certified copy of the judgment or order appealed from or a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure need not be filed. Failure of the prosecuting attorney to take any other step than timely filing the notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal 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, shall be taken within 10 days after entry of the judgment or order.

(3) Stay and Conditions of Release. Upon oral notice that the prosecuting attorney intends to appeal 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, the trial court shall order a stay of execution of the judgment or order of ten (10) days to allow time to perfect the appeal. The trial court shall also determine the conditions for defendant's release pending the appeal, which conditions shall be governed by Rule 6.02, subds. 1 and 2.

(4) Other Procedures. The provisions of 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 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.

(5) Cross-Appeals. Upon appeal by the prosecuting attorney under this subdivision, the defendant may obtain review of any 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, 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 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.

**Comments on Rule 28.04.**

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

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. 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.

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

Subd. 1. Appeals in First Degree Murder Cases. A defendant may appeal as of right from the district court to the Supreme Court from a final judgment of conviction of murder in the first degree. Either the defendant or the prosecuting attorney 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 a petition for postconviction relief under Minn. Stat. Ch. 590. The prosecuting attorney may appeal as of right from the district court to the Supreme Court, in a first degree murder case, from either a judgment of acquittal after a jury verdict of guilty of first degree murder or an order vacating judgment and dismissing the case after a jury verdict of guilty of first degree murder. Upon the appeal other charges which were joined for prosecution with the first degree murder charge may be included. Except as otherwise provided in Rule 118 of the Rules of Civil Appellate Procedure for accelerated review by the Supreme Court of cases pending in the Court of Appeals, there shall be no other direct appeals from the district court to the Supreme Court.

**Rule 29.06. Procedure for Appeals by the Prosecuting Attorney from a Judgment of Acquittal or Vacation of Judgment after a Jury Verdict of Guilty.**

Amend Rule 29 by adding a new Rule 29.06 as follows:

RULE 29.06. PROCEDURE FOR APPEALS BY THE PROSECUTING ATTORNEY FROM A JUDGMENT OF ACQUITTAL OR VACATION OF JUDGMENT AFTER A JURY VERDICT OF GUILTY

Upon an appeal to the Supreme Court 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, in a first degree murder case, the provisions of Rule 28.04, subd. 7 shall apply.

**Comments on Rule 29.02, Subd. 1.**

Amend the third paragraph of the comments on Rule 29 as follows:

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'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, 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.

**Comments on Rule 30.**

Amend the comments on Rule 30 by adding the following sentence at the end of the first paragraph of those comments:

Prosecuting attorneys 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 to prosecute the charge.

**Rule 33.05. Facsimile Transmission.**

Amend this rule by adding the following sentence at the end:

Any facsimile transmissions received by the court shall be filed as required by Rule 33.04 for the original of the document transmitted.

**Comments on Rule 34.**

Amend the last sentence of the second paragraph of the comments on Rule 34 as follows:

~~Extension of time~~ 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 36. Search Warrants upon Oral Testimony.**

Amend the rules by adding a new Rule 36 and comments as follows:

RULE 36. SEARCH WARRANTS UPON ORAL TESTIMONY

RULE 36.01. GENERAL RULE

Subject to the limitations contained in this rule, an officer legally authorized to request a search warrant may make such a request upon sworn oral testimony, in whole or in part, to a judge or judicial officer. Oral testimony may be presented via telephone, radio, or other similar means of communication. Any written submissions may be presented or communicated by facsimile transmission as well as by other appropriate means.

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 make this determination the initial focus of the oral warrant request.

RULE 36.03. APPLICATION

The person requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read the duplicate original warrant, verbatim, to the judge or judicial officer. The judge or judicial officer shall enter, verbatim, what is so read on a document to be known as the original warrant. The judge or judicial officer may direct that the warrant be modified and any modification shall be included on both the original and the duplicate original warrant.

RULE 36.04. TESTIMONY REQUIREMENTS

When the officer informs the judge or judicial officer that the purpose of the communication is to request a search warrant, the judge or judicial officer shall:

(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 the tape or other medium on which the record is made shall be submitted to the issuing judge or judicial officer as soon as practical and, in any event, not later than the time for filing as provided by 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.

(3) As soon after the testimony is received as practical, the judge or judicial officer shall direct that the record of the oral warrant request be transcribed. The judge or judicial officer shall certify the accuracy of the transcription. If a longhand verbatim record is made the judge or judicial officer shall sign it.

RULE 36.05. ISSUANCE OF WARRANT

If the judge or judicial officer is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit, that the warrant request is in all other ways in conformity with the law, and that probable cause for issuance of the warrant exists, the judge or judicial officer shall order the issuance of a warrant by directing the person requesting the warrant

to sign the judge or judicial officer's name on the duplicate original warrant. The judge or judicial officer shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was signed. The finding of probable cause for a 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 be in accordance with Rule 33.04. 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 be filed with the court also.

RULE 36.07. CONTENTS OF WARRANT

The contents of a warrant issued upon oral testimony shall be the same as the contents of a warrant upon affidavit.

RULE 36.08. EXECUTION

The execution of a warrant obtained through oral testimony shall be subject to the same laws and principles that govern execution of any other search warrant. In addition, the person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

**Comment**

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 36.01 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); Wisc. 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 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 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, 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. See Minn. Stat. §§ 626.05 -.17 (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 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.

**Forms.**

Amend the Introductory Statement to the Criminal Forms following the rules to read as follows:

The following forms are ~~intended for illustration only. They are~~ limited in number. No attempt is made to furnish a complete manual of forms. For all complaints charging a misdemeanor offense the prosecuting attorney, judge, judicial officer or clerk of court authorized to issue process shall use the appropriate form as set forth in the following criminal forms or a form substantially in compliance with these forms. The other forms provided herein are not mandatory, but shall be accepted by the court if offered by any party or counsel for their designated purpose.

Amend the Introductory Statement to the Criminal Forms by adding the following comment:

"Comment

The Final Report of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System (1993) recommends that all judicial forms and documents be drafted in easily translatable English, and be translated by approved legal translators into such additional languages as the State Court Administrator approves. It is recommended that any criminal forms that are translated consist of both English and the additional language."