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 July 7, 1998, 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 January 1, 1999.

DATED: August 21,1998

BY THE COURT:

Esther M. Tomljanovich
Associate Justice

AMENDMENTS TO THE
RULES OF CRIMINAL PROCEDURE

1. Rule 1.04. Definitions.

Amend Rule 1 by adding a new Rule 1.04 as follows:

RULE 1.04. DEFINITIONS

(a) Clerk of Court. References in these rules to clerks or deputy clerks of court shall include court administrators and deputy court administrators.

(b) Designated Gross Misdemeanors. As used in these rules, the term "designated gross misdemeanors" refers to gross misdemeanors or enhanced gross misdemeanors charged or punishable under Minn. Stat. § 169.121, Minn. Stat. §169.1211, Minn. Stat. § 169.129 or Minn. Stat. § 171.24."

(c) Tab Charge. As used in these rules, the term "tab charge" is a brief statement of the offense charged including 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.

2. Comments on Rule 1.

Amend the comments to Rule 1 by adding a new paragraph after the existing fourth paragraph as follows:

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.

3. Comments on Rule 1.04.

Amend the comments to Rule 1 by adding a new paragraph at the end of the existing comments as follows:

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 including specified enhanced 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". Minn. Stat. §169.121 (1997), Minn. Stat. §169.1211 (1997), and Minn. Stat. §169.129 (1997) relate to driving, operating, or physical control of a motor vehicle while under the influence of alcohol or a controlled or hazardous substance and Minn. Stat. §171.24 (l997) relates to driving after cancellation. Minn. Stat. § 609.02, subd. 2a (1997) defines "enhanced gross misdemeanor" as a "crime for which a sentence of not more than two years imprisonment in a correctional facility or a fine of not more than $3,000, or both, may be imposed."

4. Rule 4.02, subd. 5. Appearance Before Judge or Judicial Officer.

Amend the title to part (2) of this rule as follows:

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b) ~~Under Minn. Stat. §169.121 or Minn. Stat. §169.29~~.

5. Rule 4.02, subd. 5. Appearance Before Judge or Judicial Officer.

Amend part (3) of this rule as follows:

(3) Complaint or Tab Charge; Misdemeanors; Designated Gross Misdemeanors ~~Charged Under Minn. Stat. §169.121 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 for those offenses designated under Rule 1.04(b) ~~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 as defined in Rule 1.04(c) of ~~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 has not been made and filed in~~ In a designated gross

misdemeanor case commenced by a tab charge ~~charged under Minn. Stat. §169.121 or Minn. Stat. §169.129~~, 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, provided that in any such case the complaint shall 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 be as provided by Rule 33.02 and may include service by U.S. mail. In a misdemeanor case, the complaint shall be made and filed within 48 hours after the demand therefor if the 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.

6. Comments on Rule 4.02, subd. 5(3).

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

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) ~~under Minn. Stat. §169.121 or Minn. Stat. §169.129~~ without the necessity of issuing a complaint or obtaining an indictment as is required for felonies and other gross misdemeanors.

7. Comments on Rule 4.02, subd. 5(3).

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

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. §169.121, Minn. Stat. §169.1211 or Minn. Stat. §169.129. Rule 1.04(b) defines designated gross misdemeanor. The provisions concerning tab charges were extended to gross misdemeanor and enhanced 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 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 ~~unless the defendant has entered a guilty plea before then~~. 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 ~~under Minn. Stat. §169.121 or Minn. Stat. §169.129~~ 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.

8. Rule 5.01. Statement to the Defendant.

Amend paragraph (f) of Rule 5.01 as follows:

(f) That if the offense is a designated gross misdemeanor as defined in Rule 1.04(b) ~~punishable under Minn. Stat. §169.121 or Minn. Stat. §169.129~~ 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.

9. Rule 5.02. Appointment of Counsel.

Amend Rule 5.02 as follows:

RULE 5.02. APPOINTMENT OF ~~COUNSEL~~ PUBLIC DEFENDER

~~Subd. 1. Felonies and Gross Misdemeanors. If the defendant is not represented by counsel and is financially unable to afford counsel, the judge or judicial officer shall appoint counsel for the defendant.~~

~~Subd. 2. Misdemeanors. Unless the defendant charged with a misdemeanor punishable upon conviction by incarceration voluntarily waives counsel in writing or on the record, the court~~

~~shall appoint counsel for the defendant who appears without counsel and is financially unable to afford counsel. The court shall 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. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of the defendant's choosing or by assignment.~~

~~Notwithstanding the waiver, the court may designate counsel to be available to assist and to consult with a defendant who cannot afford counsel at all stages of the proceedings.~~

~~A defendant who proceeds at the arraignment without counsel does not waive the future right to counsel and the court must inform the defendant that the defendant continues to have that right at all stages of the proceeding. Provided that for misdemeanor offenses not punishable upon conviction by incarceration, the court may appoint an attorney for a defendant financially unable to afford counsel when requested by the defendant or interested counsel or when such appointment appears advisable to the court in the interests of justice to the parties.~~

Subd. 1. Notice of Right to Counsel; Appointment of the 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 advise the defendant of the right to counsel and the appointment of the public defender if the defendant is financially unable to afford counsel. The court shall also advise the defendant of the right to request counsel at any stage of the proceedings.

(2) Appointment of the Public Defender. Upon the request of a defendant charged with a felony, gross misdemeanor, or misdemeanor punishable by incarceration, who is not represented by counsel and is financially unable to afford counsel, the judge or judicial officer shall appoint the public defender for the defendant. In all other cases, the court may appoint an attorney for a defendant financially unable to afford counsel when requested by the defendant or interested counsel or when such appointment appears advisable to the court in the interests of justice to the parties.

(3) Waiver of Counsel, Misdemeanor. If a defendant appearing without counsel charged with a misdemeanor punishable upon conviction by incarceration does not request counsel and wishes to represent himself or herself, the defendant shall waive counsel in writing or on the record. The court shall 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 public defender for the limited purpose of advising and consulting with the defendant as to the waiver.

(4) Waiver of Counsel, Felony, Gross Misdemeanor. If a defendant appearing without counsel charged with a felony or gross misdemeanor does not request counsel

and wishes to represent himself or herself, the court shall ensure that 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 be made orally on the record. Prior to accepting any waiver, the trial court shall advise the defendant of the following: the nature of the charges, the statutory offenses included within the charges, the range of allowable punishments, that there may be defenses, that there may be mitigating circumstances, 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 public defender for 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 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 so state on the record. The court shall, on the record then, advise the defendant and counsel so appointed that the defendant retains the right to decide when and how the defendant chooses to make use of advisory counsel and that the decision on what type of role advisory counsel is permitted may affect a later request to allow advisory counsel to assume full representation of the accused.

(2) If the court appoints advisory counsel due to 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 so state on the record. The court shall on the record then advise the defendant and counsel so appointed that advisory counsel will assume full representation of the accused if (a) the defendant becomes so disruptive during the proceedings that such 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.

Advisory counsel must be present in the courtroom during all proceedings in the case and must be served with all documents which must be served upon an attorney of record.

Subd. 3. ~~Standard of Indigency~~ Standards for Public Defense Eligibility. A defendant is financially unable to obtain counsel if: ~~financially unable to obtain adequate representation without substantial hardship for the defendant or the defendant's family.~~

(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 a case of the nature at issue; or

(3) The defendant can demonstrate that due to insufficient funds or other assets: two members of a defense attorney referral list maintained by the court have refused to defend the case or, if no referral list is maintained, that two private attorneys in that judicial district have refused to defend the case.

Subd. 4. Financial Inquiry. An inquiry to determine financial eligibility of a defendant for the appointment of ~~counsel~~ the 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 public defender perform this inquiry.

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 not preclude the appointment of ~~counsel~~ the public defender for the defendant. The court may require a defendant, to the extent able, to compensate the governmental unit charged with paying the expense of the appointed ~~counsel~~ public defender.

10. Comments on Rule 5.01.

Amend the last sentence of the fourth paragraph of the comments on Rule 5 as follows:

Of course, in misdemeanor cases and in designated gross misdemeanor cases as defined in Rule 1.04(b) ~~under Minn. Stat. §169.121 or Minn. Stat. §169.129~~ where no complaint has been issued and prosecution is pursuant to a tab charge this requirement does not apply.

11. Comments on Rule 5.02.

Amend the comments on Rule 5.02 beginning with the seventh paragraph of the comments on Rule 5 as follows:

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

~~Under Rule 5.02, subd. 1, counsel must be appointed for a defendant financially unable to afford counsel in a felony or gross misdemeanor case even if a defendant exercises the constitutional right under Faretta v. California, 422 U.S. 806 (1975), to refuse the assistance of counsel and represent herself or himself. In such a situation the appointed counsel would remain available for assistance and consultation if requested by the defendant.~~

~~As suggested in Von Moltke v. Gillies, 332 U.S. 708 (1948) to ensure a knowing and intelligent waiver of counsel, the court should make a penetrating and comprehensive examination of the defendant as to the defendant's comprehension of the~~

~~(1) Nature of the charges;~~

~~(2) Statutory offenses included within them;~~

~~(3) The range of allowable punishments;~~

~~(4) The possible defenses;~~

~~(5) The possible mitigating circumstances; and~~

~~(6) All other facts essential to a broad understanding of the consequences of the waiver.~~

~~Another way for the court to assure itself that the waiver of counsel is voluntary and knowledgeable 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).~~

~~The waiver of counsel may be in writing (Minn. Stat. §611.19 (1971); ABA Standards, Providing Defense Services, 7.3 (Approved Draft, 1968)), or orally on the record.~~

~~Even though the defendant waives counsel, Rule 5.02, subd. 2 provides for the designation of counsel to be available for assistance and consultation.~~

~~Also, despite a waiver of counsel at arraignment, the defendant continues to have the right to counsel at all further stages of the proceedings, and the court must so inform the defendant. See ABA Standards, Providing Defense Services, 7.3 (Approved Draft, 1968).~~

~~For misdemeanors not punishable by incarceration, the court may, upon request of the defendant or interested counsel or upon the court's initiative when in the interests of justice to the parties, appoint an attorney to represent the defendant. The United States Supreme Court in Argersinger v. Hamlin, 405 U.S. 348 (1972) did not decide that counsel was not required whenever incarceration was not authorized. Considerations other than the possibility of incarceration may make the case sufficiently serious to warrant the appointment of counsel and this rule provides for that possibility.~~

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 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".

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.

This rule also allows the court to appoint counsel for a defendant charged with an offense which is not punishable by incarceration and who is financially unable to afford counsel upon the request of the defendant or interested counsel or upon the court's initiative when in the interests of justice to the parties. The United States Supreme Court in Argersinger v. Hamlin, 405 U.S. 348 (1972) did not decide that counsel was not required whenever incarceration was not authorized. Considerations other than the possibility of incarceration may make the case sufficiently serious to warrant the appointment of the public defender and this rule provides for that possibility.

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).

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).

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 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."

In most cases, the primary role of counsel appointed over the objection of the accused is fundamentally 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 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 main reasons 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 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 the public defender 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 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, 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 ~~sufficiently indigent to require~~ financially eligible for the appointment of ~~counsel~~ the public defender. This standard is based upon ~~taken from ABA Standards, Providing Defense Services, 6.1 (Approved Draft, 1968)~~ the standards adopted by the Minnesota State Board of Public Defense on January 30, 1993.

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.

Under part (3), the defendant is eligible for public defender representation if they are able to demonstrate that they have attempted to obtain private defense counsel and have been unsuccessful due to their financial circumstances. 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 defendant may demonstrate eligibility for the public defender by being turned down by two attorneys from the court's referral list due to the defendant's financial circumstances. If no referral list is maintained by the court, the defendant may also prove eligibility by demonstrating that they have contacted two attorneys in the judicial district and that both have refused representation due to the defendant's financial circumstances. 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.

~~In determining whether a defendant is financially unable to afford counsel in a misdemeanor case the Advisory Committee strongly recommends that the following standards be employed as guidelines so that the decision to appoint counsel for indigent defendants can be more efficiently and uniformly reached:~~

~~STANDARDS~~

~~(1) A defendant will be presumed to be financially unable to afford counsel if:~~

~~(a) the defendant's cash assets are less than $300.00 when entitled to only a court trial; or~~

~~(b) the defendant's cash assets are less than $500.00 when entitled to a jury trial; and~~

~~(c) the defendant's current weekly net income does not exceed forty times the federal minimum hourly wage as prescribed by federal law in effect at the time, if the defendant is unmarried and without dependents; or~~

~~(d) the defendant's current weekly net income and that of the defendant's spouse do not exceed sixty times the federal minimum hourly wage as prescribed by federal law in effect at the time, if the defendant is married and without dependents. In determining the amounts specified under either section (c) or section (d), for each~~

~~dependent the amount shall be increased by $25.00 per week.~~

~~(2) A defendant who has cash assets or income exceeding the amounts specified in paragraph (1) shall not be presumed to be financially able to obtain counsel. The determination shall be made by the court as a practical matter, taking into account such other factors as the defendant's length of employment or unemployment, prior income, the value and nature of the defendant's assets, number of children and other family responsibilities, number and nature of debts arising from any source, the amount customarily charged by members of the practicing bar for representation of the type in question, and any other relevant factor.~~

~~(3) In determining whether a defendant is financially able to obtain adequate representation without substantial hardship to the defendant or the defendant's family.~~

~~(a) cash assets include those assets which may be readily converted to cash by sale or loan without jeopardizing the defendant's ability to maintain a home or employment. A single family automobile shall not be considered a cash asset.~~

~~(b) the fact that the defendant has posted or can post bail is irrelevant except insofar as it represents a cash asset belonging to the defendant which could be assigned to retain counsel. The amount of bail which is or can be posted shall not in itself render a defendant financially able to obtain counsel.~~

~~(c) the fact that the defendant is employable but unemployed shall not be in itself proof of financial ability to obtain counsel without such substantial hardship.~~

~~(d) the fact that parents or other relatives of the defendant have the financial ability to obtain counsel for the defendant is irrelevant except under the following circumstances:~~

~~(i) where the defendant is unemancipated, under the age of 21 years, living with parents or other relatives, and such parents or other relatives have the clear ability to obtain counsel; or~~

~~(ii) where the parents or other relatives of the defendant have the financial ability to obtain counsel for the defendant but are unwilling to do so only because of the relatively minor nature of the charge.~~

~~Under part (1) of the recommended standards a defendant will be presumed to be financially unable to retain defense counsel and counsel shall be appointed when the defendant's income and assets fail to meet the specified minimum levels. The minimum income level referred to in the recommended standards is a weekly "net" figure and is keyed to the federal minimum hourly wage in effect at the time the appointment of counsel is requested. By reference to the minimum wage law, the standard will hopefully provide a realistic gauge of a defendant's ability to hire counsel which will vary with the economy. As made clear by part (2) of the recommended standard, part (1) provides a presumption of indigency and is not to be taken as indicating that a defendant with a higher income and assets must obtain private counsel. A defendant with a higher income or assets should still be appointed counsel if unable under part (2) to obtain adequate representation without substantial hardship to the defendant or the defendant's family. In making this determination the court shall consider the factors listed in parts (2) and (3) of the standard, as well as any other relevant factors.~~

To assist the court in deciding whether to appoint ~~counsel~~ 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. 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 ~~counsel~~ the public defender. This provision is included to make clear that ~~counsel~~ 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 ~~counsel~~ 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.

12. Rule 6.02, subd. 1. Conditions of Release.

Amend Rule 6.02, subd. 1 by adding a new paragraph as a third paragraph from the end of the rule as follows:

If such conditions of release, aside from an appearance bond, are imposed by the court, the court shall issue a written order containing those conditions of release. A copy of any such order shall be provided to the defendant and immediately to the law enforcement agency that has or had custody of the defendant. Such law enforcement agency shall also be provided by the court with any available information on the location of the named victim.

13. Comments on Rule 6.02, subd. 1.

Amend the twenty-first paragraph of the comments on Rule 6 as follows:

For certain driving while intoxicated prosecutions under Minn. Stat. § 169.121 where 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). Those conditions could include alcohol testing and 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 also fix the amount of money bail (secured by cash, property, or qualified sureties) without any other conditions upon which the defendant may 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.

14. Comments on Rule 6.01, subd. 1.

Amend the comments on Rule 6 by adding the following two new paragraphs after the existing twenty-first paragraph of those comments:

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 be issued promptly and the defendant's release should not be unnecessarily delayed. In addition to providing a copy of any such 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 written orders are required because it is important that the defendant, as well as other concerned persons and law enforcement officers, know precisely what conditions govern the defendant's release.

In connection with the setting of bail or other conditions of release, see Minn. Stat. § 629.72, subd. 7 and Minn. Stat. § 629.725 as to the duty of the court to provide notice of a hearing on the 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.

15. Rule 8.01. Place of Appearance and Arraignment.

Amend the rule as follows:

RULE 8.01. PLACE OF APPEARANCE AND ARRAIGNMENT

The defendant's initial appearance following the complaint or, for a designated gross misdemeanor as defined by Rule 1.04(b) ~~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 designated 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 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.

16. Comments on Rule 8.

Amend the first paragraph of the comments on Rule 8 as follows:

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 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) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ (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 ~~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 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.

17. Comments on Rule 8.

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

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.

18. Comments on Rule 9.02, subd. 2.

Amend the last sentence of the thirty-seventh paragraph of the comments on Rule 9 as follows:

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 ~~or a tab charge has been entered and no complaint demanded for gross misdemeanors under Minn. Stat. §169.121 and Minn. Stat. §169.129~~.

19. Comments on Rule 9.02, subd. 2.

Amend the thirty-ninth paragraph of the comments on Rule 9 as follows:

Following a complaint charging a felony or gross misdemeanor ~~or a tab charge charging a gross misdemeanor under Minn. Stat. §169.121 or Minn. Stat. §169.129~~, the order may be obtained at the first appearance of the defendant under Rules 4.02, subd. 5(1) and 5, or at or before the Omnibus Hearing under Rule 11 from the court before which that hearing is held. It may be obtained from the district court at any time before trial, but preferably at or before the Omnibus Hearing.

20. Rule 11. Omnibus Hearing in Felony and Gross Misdemeanor Cases.

Amend the introductory paragraph to Rule 11 as follows:

If the defendant does not plead guilty at the initial appearance before the district court following a complaint or, for a designated gross misdemeanor as defined by Rule 1.04(b) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.169~~, following a tab charge, a hearing shall be held as follows:

21. Rule 11.02, subd. 1. Evidence.

Amend rule 11.02, subd. 1 as follows:

Subd. 1. Evidence. If the defendant or prosecution has demanded a hearing on either of the issues specified by Rule 8.03, the court shall hear and determine them upon such evidence as may be offered by the prosecution or the defense. 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.

22. Rule 11.10. Plea; Trial Date.

Amend Rule 11.10 as follows:

RULE 11.10. PLEA; TRIAL DATE

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. The entry of a plea other than guilty in that situation does not waive any pending jurisdictional or other issues that the defendant may have raised for determination by the court at the Omnibus Hearing. If the defendant ~~pleads not~~ enters a plea other than guilty, a trial date shall then be set. A defendant shall be tried as soon as possible after entry of a plea other than guilty ~~not guilty plea~~. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the trial shall 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 time period shall not begin to run earlier than the date of the plea other than guilty ~~not guilty plea~~. If trial is not commenced within 120 days after such demand is made and ~~the not guilty~~ such a plea is entered, the defendant, except in exigent circumstances, shall be released subject to such nonmonetary release conditions as may be required by the court under Rule 6.01, subd. 1.

23. Comments on Rule 11.02.

Amend the comments on Rule 11 by adding the following two new paragraphs after the existing eighth paragraph of those comments:

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.

In State v. Scales, 518 N.W.2d 587 (Minn. 1994), 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.

24. Comments on Rule 11.07.

Amend the existing seventeenth paragraph of the comments on Rule 11 by adding the following language at the end of that paragraph:

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.

25. 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 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, 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 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, 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 duties under the Victim's Rights Act to make reasonable efforts to provide advance notice of the continuance.

26. Comments on Rule 11.10

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

Rule 11.10 provides that 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. (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.

27. Comments on Rule 11.10.

Amend the last two paragraphs of the comments on Rule 11 as follows:

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 (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 N.W.2d 224 (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 the demand does not begin to run earlier than the date of the ~~not guilty~~ 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 ~~not~~ plea other than guilty ~~plea~~ 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 demand is made before ~~the not guilty~~ 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).

28. Rule 12.04, subd. 1. Evidence.

Amend Rule 12.04, subd. 1 as follows:

Subd. 1. Evidence. If the defendant or the prosecution has demanded a hearing on the issue specified by Rule 7.01, the court shall hear and determine the issue upon such evidence as may be offered by the prosecutor or the defense. 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.

29. Comments on Rule 12.04, subd. 1.

Amend the comments on Rule 12 by adding a new paragraph after the existing eighth paragraph as follows:

Rule 12.04, 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.

30. Rule 13.03. Copy and Reading of Charges.

Amend Rule 13.03 as follows:

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) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ prosecuted by tab charge pursuant to Rule 4.02, subd. 5(3), the tab charge shall be read to the defendant.

31. Comments on Rule 13.

Amend the first sentence of the first paragraph of the comments on Rule 13 as follows:

Arraignment as provided by Rule 13, will take place at the appearance of the defendant in the court under Rule 8 following a complaint 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) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ or under Rule 19.04, subd. 4 and subd. 5 following an indictment.

32. Rule 14.02, subd. 1. By an Individual in Felony and Gross Misdemeanor Cases.

Amend Rule 14.02, subd. 1 as follows:

Subd. 1. By an Individual in Felony and Gross Misdemeanor Cases. A plea to an indictment or complaint or, for a designated gross misdemeanor as defined by Rule 1.04(b) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~, a tab charge by an individual defendant shall be made orally on the record by the defendant in person.

33. Comments on Rule 14.

Amend the third paragraph of the comments on Rule 14 as follows:

A conditional plea of guilty may not be entered whereby 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 (Minn. 1980). One option, as authorized by Rule 26.01 subd. ~~2~~ 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).

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

Amend number 10 in Rule 15.01 as follows:

10. Whether defense counsel has told the defendant and the defendant understands:

a. That the maximum penalty that the court could impose for the crime charged (taking into consideration any prior conviction or convictions) is imprisonment for ____ years.

b. That if a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than ____ months for the crime charged.

c. That if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

35. Rule 15.02. Acceptance of Plea; Questioning Defendant; Misdemeanor Cases.

Amend number 2 in Rule 15.02 as follows:

2. Whether the defendant realizes 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.) Further, whether the defendant realizes that, if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

36. Rule 15.08. Plea to Different Offense.

Amend Rule 15.08 as follows:

RULE 15.08. PLEA TO DIFFERENT OFFENSE

With the consent of the prosecuting attorney and the defendant, the defendant may enter a plea of guilty 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, ~~other than a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129,~~ a new complaint shall be signed by the prosecuting attorney and filed in the district court. The complaint shall be in the form prescribed by Rule 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 ~~or a gross misdemeanor under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~, the defendant may be charged by complaint or tab charge as provided in Rule 4.02, subd. 5(3) with the new offense and the original charge shall be dismissed.

37. Rule 15, Appendix A.

Amend number 13 of the Appendix A to Rule 15 by deleting part c as follows:

~~c. For gross misdemeanor driving while intoxicated charges under Minn. Stat. §169.121or Minn. Stat. §169.129 if a complaint has not been filed, I know that I could request that a complaint be filed and that I waive my right to do so. I know that I could move that any complaint filed against me be dismissed for lack of probable cause. I also know that if I plead guilty, I waive all right to object to the absence of a probable cause hearing.~~

38. Rule 15, Appendix A.

Amend number 19 of Appendix A to Rule 15 by adding a new part "e" as follows:

e. That if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation, exclusion from admission to the United States or denial of naturalization as a United States citizen.

39. Rule 15, Appendix B.

Amend number 5 of Appendix B to Rule 15 as follows:

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

40. Rule 15, Appendix C.

Amend Rule 15 by adding a new Appendix C as follows:

APPENDIX C TO RULE 15

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

_____

State of Minnesota,
Plaintiff,
vs.

_____,
Defendant.

_____

PETITION TO ENTER
PLEA OF GUILTY BY
PRO SE DEFENDANT

TO: THE ABOVE NAMED COURT

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

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

2. If filed in my case, I have received and read a copy of the (Indictment) (Complaint).

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

4. Specifically, I understand that I have been charged with the crime of _____ committed on or about _____(month) _____(day) _____(year) in _____ County, Minnesota, (and that the crime I am talking about is _____ which is a lesser degree or lesser included offense of the crime charged).

5a. I understand that I have an absolute right to have an attorney represent me at any stage of these proceedings, including a guilty plea.

b. I have read over and completed a Petition to Proceed as Pro Se Counsel (Form 11) and provided that Petition to the Court on _____.

c. I have been advised of the nature of the charges and statutory offenses included in the charges against me, the maximum sentence permitted, the possible defenses, mitigating circumstances, and other relevant facts so that I understand the advantages and disadvantages of waiving my right to an attorney.

d. Knowing the consequences of giving up my right to counsel, I waive my right to be represented by an attorney during the entry of my guilty plea.

6. I (have) (have not) been a patient in a mental hospital.

7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.

8. I (have) (have not) been ill recently.

9. I (have) (have not) recently been taking pills or other medicines.

10. I (do) (do not) make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime.

11. I (do) (do not) make the claim that I was acting in self-defense or merely protecting myself or others at the time of the crime.

12. I (do) (do not) make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.

13. I (was) (was not) represented by an attorney when I (had a probable cause hearing). (If I have not had a probable cause hearing.)

a. I know that I could now move that the complaint against me be dismissed for lack of probable cause and I know that if I do not make such a motion and go ahead with entering my plea of guilty, I waive all right to successfully object to the absence of a probable cause hearing.

b. I also know that I waive all right to successfully object to any errors in the probable cause hearing when I enter my plea of guilty.

14. I understand:

a. That the prosecutor for the case against me, has:

i. physical evidence obtained as a result of searching for and seizing the evidence;

ii. evidence in the form of statements, oral or written that I made to police or others regarding this crime;

iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search;

iv. identification evidence from a lineup or photographic identification;

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

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

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

d. That I (do) (do not) now request such a pre-trial hearing and I specifically (do) (do not) now waive my right to have such a pre-trial hearing.

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

15. I understand:

a. That if I wish to plead not guilty I am entitled to a trial by a jury and all jurors would have to agree I was guilty before the jury could find me guilty.

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

c. That with knowledge of my right to a trial I now waive my right to a trial.

16. I understand that if I wish to plead not guilty and have a trial by jury or trial by a

judge I would be presumed innocent until my guilt is proved beyond a reasonable doubt.

17. I understand:

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

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

18. I understand:

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

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

19. I understand:

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

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

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

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

e. That if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation, exclusion from admission to the United States or denial of naturalization as a United States citizen.

20. I understand:

a. That I have discussed this case with one of the prosecuting attorneys and that the prosecuting attorney and I agreed that if I entered a plea of guilty, the prosecutor will do the following:

(Give the substance of the agreement)

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

i. I have an absolute right to then withdraw my plea of guilty and have a trial.

ii. Any testimony that I have given concerning the guilty plea could not be used against me unless I am charged with the crime of perjury based on this testimony.

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

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

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

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

a. I would then stand trial on the original charge (charges) against me, namely _____ (which would include any charges that were dismissed as a result of the plea agreement entered into by the prosecuting attorney and me.)

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

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

24. I understand that a judge will not accept a plea of guilty for anyone who claims to be innocent.

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

26. I understand that if I wish to plead not guilty and have a jury trial:

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

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

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

27. That in view of all the above facts and considerations I wish to enter a plea of guilty.

Dated this ____ day of _____, ____.

_____
DEFENDANT

41. Comments on Rule 15.

Amend the comments to Rule 15 by adding after the existing second paragraph a new paragraph to read as follows:

The inquiry required by paragraph 10.c. of Rule 15.01 and by paragraph 2 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; Texas, Tex. Code Crim. Proc. Ann. art. 26.13; and Washington, Wash. Rev. Code Ann. § 10.40.200. 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 (2d ed. 1982). 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).

42. Comments on Rule 15.04, subd. 1.

Amend the twelfth paragraph of the comments to Rule 15 by adding the following language at the end of that paragraph:

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 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.

43. Comments on Rule 15.10

Amend the next to last paragraph of the comments on Rule 15 as follows:

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, it is necessary for the prosecuting attorney having authority to charge the offense to charge the defendant in the jurisdiction having venue. This may be done by complaint or indictment or, for misdemeanors ~~or gross misdemeanors under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ 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.

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

Amend the last sentence in the first paragraph of Rule 17.01 as follows:

Misdemeanors and designated gross misdemeanors as defined by Rule 1.04(b) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ may be prosecuted by tab charge, provided that for any such designated gross misdemeanors, a complaint shall be subsequently made, served and filed as required by Rule 4.02, subd. 5(3).

45. Rule 17.06, subd. 4. Effect of Determination of Motion to Dismiss.

Amend the last sentence of Rule 17.06, subd. 4 as follows:

In misdemeanor cases and also in designated gross misdemeanor cases as defined in Rule 1.04(b)

~~under Minn. Stat § 169.121 or Minn. Stat. § 169.129~~ dismissed for failure to file a timely complaint within the 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.

46. 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 designated gross misdemeanor as defined in Rule 1.04(b) ~~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 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 prosecuted by indictment and, in such cases, rules applicable to indictments shall apply.

47. Comments on Rule 17.06, subd. 4.

Amend the second sentence in the next to last paragraph of the comments on Rule 17 as follows:

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 and also for designated gross misdemeanor cases as defined in Rule 1.04(b) ~~under Minn. Stat. § 169.121 or Minn. Stat. §169.129~~ 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.

48. Comments on Rule 17.06, subd. 4.

Amend the fourth sentence of the last paragraph of the comments on Rule 17 as follows:

However, in misdemeanor cases and also in designated gross misdemeanor cases as defined in Rule 1.04(b) ~~under Minn. Stat. § 169.121 or Minn. Stat. § 169.129~~ dismissed for failure to file a timely complaint within ~~thirty (30) days pursuant to~~ 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.

49. Rule 18.04. Who May Be Present.

Amend Rule 18.04 as follows:

RULE 18.04. WHO MAY BE PRESENT.

Attorneys for the State, the witness under examination, qualified interpreters for witnesses handicapped 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 in session, but 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 order of court and a showing of necessity for the purpose of security, a designated peace officer may be present while a specified witness is testifying. If a witness before the grand jury so requests and has effectively waived immunity from self-incrimination or has been granted use immunity, the attorney for the witness may be present while the witness is testifying, provided the attorney is then and there available for that purpose or the attorney's presence can be secured without unreasonable delay in the grand jury proceedings. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the witness while the witness is testifying.

50. Rule 18.08. Secrecy of Proceedings.

Amend the first sentence of Rule 18.08 as follows:

Every grand juror and every qualified interpreter for a grand juror with a sensory disability present during deliberations or voting shall keep secret whatever that juror or any other juror has said during deliberations and how that juror or any other juror has voted.

51. Comments on Rule 18.04.

Amend the comments on Rule 18 by adding the following new paragraph after the existing thirteenth paragraph of the comments:

Rule 18.04 also 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.

52. Comments on Rule 18.08.

Amend the existing twenty-second paragraph of the comments on Rule 18 as follows:

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 (l971). 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.

53. Comments on 25.02.

Amend the seventh paragraph of the comments on Rule 25 by adding the following language at the end of that paragraph:

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.

54. Rule 26.01, subd. 2. Trial Without a Jury.

Amend the second paragraph of current Rule 26.01, subd. 2 by designating it as subdivision 3 as follows:

Subd. 3. Trial on Stipulated Facts. By agreement of the defendant and the prosecuting attorney, a case may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the defendant shall acknowledge and 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. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as on any other trial to the court. If 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.

55. Rule 26.02, subd. 2. List of Prospective Jurors.

Amend Rule 26.02, subd. 2 as follows:
Subd. 2. Juror Information.

(1) List of Prospective Jurors. Upon request the clerk of court shall furnish the parties with a list of the 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 after a hearing in accordance with this rule. ~~The parties shall also have access to such other information as the clerk has obtained from prospective jurors.~~

Upon the motion of a party that there is a special need to restrict the parties access to names and addresses of prospective jurors, the court shall hold a hearing on the motion. The court may order that the parties' access to this information about the prospective jurors be restricted only if it determines that, in the individual case there is a strong reason to believe that the jury needs protection from external threats to its members' safety or impartiality. 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 make clear and detailed findings of fact in writing or on the record in open court supporting its determination that the restriction on access to information about the jurors is necessary for the jurors' safety or impartiality.

(2) Jury Questionnaire. As a supplement to oral voir dire, a sworn jury questionnaire designed for use in criminal cases may be used to obtain information helpful to the parties and the court in jury selection before the jurors are called into court for examination. Court personnel may hand out the questionnaire to the prospective jurors and collect them when completed. The court shall make the completed questionnaires available to counsel.

56. Rule 26.02, subd. 6a. Objections to Peremptory Challenges.

Amend Rule 26.02, subd. 6a as follows:

Subd. 6a. Objections to Peremptory Challenges.

(1) Rule. No party may engage in purposeful discrimination on the basis of either race or gender 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 or gender 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 the 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 or gender 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 or gender. 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 or gender. 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~~ must articulate a race-neutral or gender-neutral explanation, as applicable, for exercising the peremptory challenge(s) in question. If no race-neutral or gender-neutral explanation is ~~made~~ articulated, the objection shall be sustained.

(c) Third, if the court determines that ~~the explanation is~~ a race-neutral or gender-neutral explanation has been articulated, ~~the burden of proving purposeful discrimination then shifts back to~~ the objecting party~~, who will then have the opportunity to~~ must prove that the proffered ~~reasons are~~ explanation is 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 or gender. If purposeful discrimination is ~~found~~ proved the objection shall be sustained. If no purposeful discrimination is ~~found~~ proved 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.

57. Rule 26.03, subd. 15. Evidence.

Amend Rule 26.03, subd. 15 as follows:

Subd. 15. Evidence. In all trials the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules. 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.

58. Rule 26.03, subd. 16. Interpreters.

Amend Rule 26.03, subd. 16 as follows:

Subd. 16. Interpreters. The court may appoint an interpreter 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 appointed by the court for any juror with a sensory

disability may be present in the jury room to interpret while the jury is deliberating and voting.

59. Comments on Rule 26.01, subd. 2.

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

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 from Minn. R. Civ. P. 49(a). The provision in ~~the rule~~ 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). The rules do not permit conditional pleas of guilty whereby 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). However, by agreement of the parties, the issues may be preserved by submitting the case on stipulated facts as authorized by Rule 26.01, subd. ~~2~~3.

60. Comments on Rule 26.02, subd. 2.

Amend the comments on Rule 26.02, subd. 2 by revising the nineteenth paragraph of the comments to Rule 26 and adding the new paragraphs thereafter as follows:

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, ~~1968~~ 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, the rule provides for a hearing upon a party's motion that the jurors' names and addresses 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 a finding that there is strong reason to believe that this condition exists, the court may enter an order that information regarding identity and addresses of prospective jurors be withheld from the parties and counsel. See State v. Bowles, 530 N.W.2d 521, 530-1 (Minn. 1995); State v. McKenzie, 532 N.W.2d 210, 219 (Minn. 1995). 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(2) (Jury Questionnaire).

The use of a written jury questionnaire has proved to be an 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 includes questions relevant to jury selection in any criminal case. See Form 50 for the Jury Questionnaire. Additionally the court may submit to the prospective jurors other written 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 jurors. Upon completion of the questionnaire, the court shall 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.

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.

In addition to being part of the record in the case, jury selection is a part of the criminal trial which is presumed to be open to the public. Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501 (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 press have a right of access to that information in the usual case. See e.g., Lesher Communications, Inc. v. Superior Court of Contra Costa County, 224 Cal. App. 3d 774 (1990).

61. Comments on Rule 26.02, subd. 6a.

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

Rule 26.02, subd. 6a (Objections to Peremptory Challenges) is intended to adopt and implement 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 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 (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). 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 State v. Davis, 504 N.W.2d 767 (Minn. 1993) cert. Denied Davis v. Minnesota, 511 U.S. 1115, 114 S.Ct. 2120 (1994). 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).

62. Comments on Rule 26.03, subd. 15.

Amend the comments on Rule 26 by adding a new paragraph after the existing fifty-fifth

paragraph of the comments, concerning Rule 26.03, subd. 15 as follows:

Rule 26.03, subd. 15 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.

63. Comments on Rule 26.03, subd. 16.

Amend the existing fifty-sixth paragraph of the comments on Rule 26, concerning Rule 26.03, subd. 16, to read as follows:

The provisions in Rule 26.03, subd. 16 (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, State v. Crandall, 452 N.W.2d 708 (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.

64. Rule 27.03, subd. 3. Statements at Time of Sentencing.

Amend Rule 27.03, subd. 3 as follows:

Subd. 2. Statements at Time of Sentencing. Before pronouncing sentence, the court shall give 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 sentence. 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 of the defendant. The court shall not accept any communication relative to sentencing that is not on the record without disclosing the contents to the defense and to the prosecution.

65. Rule 27.04, subd. 1(1). Issuance of Revocation Warrant or Summons.

Amend Rule 27.04, subd. 1(1) as follows:

(1) Issuance of Revocation Warrant or Summons. Proceedings for the revocation of probation shall be commenced by the issuance of a warrant or a summons by the court based upon a written report showing probable cause to believe that the probationer has violated any conditions of probation. The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based. ~~In any case the court may~~ The court shall issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer, unless it reasonably appears that the arrest of the defendant is necessary to prevent harm to the defendant or another. If the probationer fails to appear in response to a summons, a warrant may be issued.

66. Comments on Rule 27.02.

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

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.

67. Comments on Rule 27.03.

Amend the eighth paragraph of the comments on Rule 27 by adding the following language at the end of that paragraph.

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 meets the requirements set forth in Minn. Stat. § 609.2244, subd. 2.

68. Comments on Rule 27.03.

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

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 Rule 27.03, subd. 1(D). 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.

69. Comments on Rule 27.03.

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

Rule 27.03, subd. 3 (Statements at the Time of Sentencing) is based on ABA Standards, 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.

70. Comments on Rule 27.03.

Amend the comments on Rule 27 by adding a new paragraph after the existing nineteenth paragraph as follows:

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.

71. Comments on Rule 27.05.

Amend the last paragraph of the comments on Rule 27 by adding the following language to that paragraph:

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 placing a person into a pretrial diversion program.

72. Rule 28.02, subd. 5(1).

Amend part (l) of Rule 28.02, subd. 5 as follows:

(l) An indigent defendant wanting to appeal or to obtain post conviction relief shall make application therefor to the State Public Defender.~~, addressed as follows:~~

~~Minnesota State Public Defender~~
~~The Law School, University of Minnesota~~
~~Minneapolis, MN 55455~~

73. Rule 28.02, subd. 7. Release of Defendant.

Amend Rule 28.02, subd. 7, by adding a new part (5) at the end as follows:

(5) If a defendant convicted of a crime against person is released pending appeal pursuant to this rule, the prosecution shall make reasonable good faith efforts to advise the victim as soon as possible of the defendant's release.

74. Rule 28.02, subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record.

Amend rule 28.02, subd. 9 as follows:

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. The Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the transcript shall 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 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 correctness of any such videotape or audiotape transcript. If the entire transcript is not to be included, the appellant, within the 30 days, shall file with the clerk of the appellate courts and serve on the clerk of the trial court 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 order , 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 court for an order requiring the appellant to do so.

75. Rule 28.04, subd. 1. Right of Appeal.

Amend Rule 28.04, subd. 1(1) to read as follows:

(1) in any case, from any pretrial order of the trial court, including probable cause dismissal orders based on questions of law. However, ~~except~~ an order is not appealable (a) if it is based solely on a factual determination dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or (b) if it is an order dismissing a complaint pursuant to Minn. Stat. §631.21; and

76. Rule 28.04, subd. 2. Procedure Upon Appeal of Pretrial Order.

Amend parts (1) and (2) of rule 28.04, subd. 2 to read as follows:

(1) Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order which shall also include a statement for the record as to how the trial court's alleged error, unless reversed, will have a critical impact on the outcome of the trial, the trial court shall order a stay of proceeding of five (5) days to allow time to perfect the appeal.

(2) Notice of Appeal. The prosecuting attorney shall file with the clerk of the appellate courts a notice of appeal, a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure which shall also include a summary statement by the prosecutor as to how the trial court's alleged error, unless reversed, will have a critical impact on the outcome of the trial, and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary. The notice of appeal, the statement of the case, and request for transcript shall have attached at the time of filing, proof of service on the defendant or defense counsel, the State Public Defender, the attorney general for the State of Minnesota, and the clerk 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's appeal, but it is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal shall be as set forth in Rule 28.02, subd. 4(2).

77. Comments on Rule 28.

Amend the first paragraph of the comments on Rule 28 by adding the following language at the end of that paragraph:

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.

78. Comments on Rule 28.02, subd. 9.

Amend the thirteenth paragraph of the comments on rule 28 by adding the following language at the end of that paragraph:

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 court under Rule 110.05 of the Rules of Civil Appellate Procedure.

79. 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. 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.

80. Comment on Rule 28.04.

Amend the twenty first paragraph of the comments on Rule 28 as follows:

Generally, absent special circumstances, failure of the prosecuting attorney 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, the 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)).

81. FORMS.

Amend the Criminal Forms following the Rules of Criminal Procedure by deleting the existing Form 11, Waiver of Counsel for Misdemeanor Pursuant to Rule 5.02, subd. 2, and replacing it with the following Form 11, Petition to Proceed as Pro Se Counsel. Also, add to the forms the following Form 49, Criminal Judgment and Warrant of Commitment, and Form 50, Jury Questionnaire.

FORM 11.

PETITION TO PROCEED AS
PRO SE COUNSEL

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF JUDICIAL DISTRICT

_____

State of Minnesota,

Plaintiff,

vs.

_____,

Defendant.

_____

PETITION TO PROCEED
AS PRO SE COUNSEL

District Court File No.

TO: THE ABOVE-NAMED COURT

I,_____ defendant in the above-entitled action, request the Court to allow me to represent myself, and do respectfully represent and state as follows:

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

2. I have received and read the (complaint)(indictment).

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

4. Specifically, I understand that I have been charged with the crime(s) of
   _____
   alleged to have occurred on or about _____, _____, in
   _____, County, Minnesota.

5. I have discussed my desire to represent myself with an attorney whose name is
   _____.

_____
Petitioner

6. I (have)(have never) been a patient in a mental hospital.

7. I (have)(have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.

8. I (have)(have not) been ill recently.

9. I (have)(have not) recently been taking pills or medicine.

10. I understand that I have an absolute right to have an attorney represent me in these proceedings. I understand that if the Court grants my petition to represent myself, I will be responsible for preparing my case for trial and trying my case. I understand that I will be bound by the same rules as an attorney. I understand that if I fail to do something in a timely manner, or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.

11. That in making any decisions regarding the conduct of this case, I have the right to consult with advisory counsel assigned to this case.

12. I understand the Court will schedule a probable cause hearing, if one has not already been held. At the probable cause hearing, I can make a motion that the complaint or indictment filed against me be dismissed for lack of probable cause. That the preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.

13. I understand that:
    a. the prosecution for their case against me has:
        i. physical evidence obtained as a result of searching for and seizingevidence.
        ii. evidence in the form of statements, oral or written, that I made to the police or others regarding the charges;
        iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search.
        iv. identification evidence from a line-up or photographic identification.
        v. evidence the prosecution believes indicates that I committed one or more other crimes.
    b. That I have the right to a pretrial hearing before a judge to determine whether or not the evidence the prosecution has could be used against me at trial in this case.
    c. That I can testify at the hearing if I want to, but my testimony could not be

_____
Petitioner

used as substantive evidence against me if I went to trial and could only be used against me if I was charged with the crime of perjury. (Perjury means testifying falsely.)

d. That the preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.

14. I understand that I am entitled to a trial by jury of 12 persons in a felony case and a jury of 6 persons in other cases and all jurors must agree before they can find me guilty. Also, all jurors must agree before they can find me not guilty. I also understand that I may ask for a trial to the judge and not a jury. I further understand that I will conduct all phases of the trial including, but not limited to: writing and filing motions, making arguments to the Court, selection of the jury, cross-examination of the witnesses for the prosecution, direct examination of my witnesses, making all objections, opening statement and closing argument.

15. I understand that I am entitled to require any witnesses that I think are favorable to me to appear and testify at my trial by use of a subpoena.

16. I understand:

a. That a person who has prior convictions or a prior conviction can be given a longer prison term.

b. That the maximum statutory penalty that the Court could impose for this crime (taking into consideration any prior conviction or convictions) is imprisonment for _____ years, and/or a fine of $_____. That if a minimum sentence is required by statute the Court may impose a sentence of imprisonment of not less than _____ months for this crime.

17. I understand that if I am eligible for the services of the public defender, the Court will appoint the Office of the _____ Public Defender. However, I am under no obligation to seek advice from advisory counsel. I understand that the role of advisory counsel is limited. I understand that:

a. Advisory counsel will be physically present in the courtroom during all proceedings in my case.

b. Advisory counsel will respond to request for advice from me. Advisory counsel will not initiate such discussions.

c. The support staff of the public defender - investigators, secretaries, law

clerks, and legal service advisors will not be available to me.

d. If need investigative services, expert services, waivers of fees, research, secretarial services, or any other assistance, I must petition the Court for whatever relief or assistance I deem appropriate. Such request is pursuant to Minnesota Statute § 611.21.

e. If I am out of custody and desire to conduct legal research, I will be expected to do it myself at the library.

f. Advisory counsel will not be prepared to try my case on the trial date unless ordered to be prepared to do so by the court.

g. Advisory counsel will be present for all Court appearances to consult with me if I request. Advisory counsel will be seated either at the back of the courtroom or at counsel table, based on my wishes and the Court's wishes. In an effort to vindicate my constitutional right to self-representation, advisory counsel will not initiate motions, objections, arguments to the Court, or any other aspect of representation unless I have given prior approval to the specific aspect of representation.

h. If I wish to give up my right to represent myself, I know that the Court will not automatically grant my request. The Court will consider the following in either granting or denying that request: the stage of the proceedings, whether advisory counsel is prepared to take over, the length of the continuance necessary for the advisory counsel to assume representation, the prejudice to either party, whether the jury has been sworn, and any other relevant considerations.

i. If the Court grants my request to give up the right to represent myself and substitute advisory counsel, the trial date may be continued if requested by the advisory counsel. The trial date will then be reset at a date mutually agreeable between counsel for the prosecution and counsel for the defendant.

j. In the unlikely event that the Court orders advisory counsel to represent me after the trial has started and jeopardy has attached, the Court may grant a mistrial if requested by my new attorney and reset the trial date at a date mutually agreeable between counsel.

18. That in view of the above, I wish to waive my right to be represented by an

_____

Petitioner

attorney and represent myself.

Dated this _____ day of _____, _____.

_____
Petitioner

State of Minnesota District Court

County | Judicial District | Case Number

State of Minnesota
vs.

CRIMINAL JUDGMENT AND WARRANT OF COMMITMENT

Name: _____ A/K/A: _____

Address: _____

Phone: _____ Sex: ___ Race: _____ DOB: _____/_____/_____

Custody Status: _____

SJIS Complaint #: _____ Controlling Agency: _____ Control Number: _____

JUDGMENT AND CONDITIONS

Offense Date:_____/_____/_____
Date of: ☐ Sentence ☐ Violation/Revocation ☐ Resentence ☐ Correction _____/_____/_____

Level of Conviction: ☐ Felony ☐ Gross Misdemeanor ☐ Misdemeanor Count(s) _____

Count #: _____ M.S. § _____ M.O.C. _____ G.O.C. ___
☐ amended ☐ reduced

On _____/_____/_____ the defendant:

- ☐ entered a plea of guilty
- ☐ was found guilty by the Court
- ☐ was found guilty by a jury
- ☐ probation before conviction (M.S. § 152.18)
- ☐ stay of adjudication
- ☐ other

Non-Conviction Dispositions Count Number(s): _____ ☐ Dismissed ☐ Acquitted

☐ **FELONY LEVEL SENTENCE**

☐ Committed to Commissioner of Corrections for _____ years, _____ months and _____ days
(M.S.§244.101: When the court sentences an offender to an executed sentence for an offense occurring on or after Aug. 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence.)

☐ Sex Offender Conditional Release pursuant to M.S. § 609.346: ☐ 5 years ☐ 10 years(2nd/Subsequent)

☐ Stay of execution for _____ years, _____ months

OR

☐ Stay of imposition for _____ years, _____ months

☐ **MISDEMEANOR/GROSS MISDEMEANOR LEVEL SENTENCE**

☐ Sentence to ☐ jail ☐ work house for _____ months, _____ days
of which _____ months, _____ days are stayed for _____ years, _____ months

OR

☐ Stay of imposition for _____ years, _____ months

Sentence is ☐ concurrent or ☐ consecutive to: Case #: _____ Count #(s): _____

☐ Departure Report should be forwarded to the Minnesota Sentencing Guidelines Commission

STATE OF MINNESOTA
CRIMINAL JUDGMENT/WARRANT OF COMMITMENT (Continued)

COUNTY: _____ **CASE #:** _____ **Defendant** _____

CONDITIONAL LOCAL INCARCERATION

_____ days in jail as a condition of a stayed sentence.

In lieu of jail, defendant may do: ☐ community service ☐ house arrest ☐ electronic surveillance ☐ fine

Report to jail on _____. May serve: ☐ on weekends ☐ on work release as approved by the sheriff.

☐ Jail Credit: _____ (days) time served

FINANCIAL CONDITIONS

The following financial conditions also apply to CASE # _____ Count(s) _____

Restitution is jointly/severally with CASE # _____

☐ Fine	$ _____	☐ Fine Stayed	$ _____
☐ Court Costs	$ _____	☐ Chem Fee	$ _____
☐ Surcharge	$ _____	☐ Other _____	$ _____
☐ Restitution	$ _____	☐ Other _____	$ _____
☐ Law Library	$ _____	**TOTAL**	$ _____

Payments are to be made at $ _____ per _____ by (date) _____/_____/_____

Payment arrangements to be made by ☐ court administration ☐ probation

☐ Defendant is found indigent.

ADDITIONAL CONDITIONS

☐ Chemical evaluation and recommendations	☐ No alcohol related offenses
☐ _____ hours community service by _____/_____/_____	☐ Remain sober
☐ Domestic abuse counseling and recommendations	☐ Restitution through probation $ _____
☐ Psychological evaluation and recommendations	☐ Treatment and aftercare
☐ All fines and surcharges are waived due to defendant's indigence	☐ Usual conditions of probation
☐ No contact with _____	☐ No same or similar offenses
☐ Sex offender treatment program	☐ Remain law abiding
☐ Other _____	☐ Drug information clinic

COMMENTS:

IN COURT PERSONNEL

Court Administrator/Deputy: _____ Date: ____/____/____

Sentencing Judge: _____ Date: ____/____/____

FORM 50
JURY QUESTIONNAIRE

The use of this Questionnaire is to assist lawyers and the court in the selection of a fair, impartial and neutral jury.

Your answers to the questions contained in the Questionnaire, like your answers to questions in open court during jury selection proceedings, are part of the public record in this case.

DO NOT DISCUSS YOUR ANSWERS WITH ANY OF THE OTHER PROSPECTIVE JURORS.

1. Name_____

2. Place of residence (City, Village, or Township): _____

   _____ Zip Code _____

3. How long have you lived in this location ?_____

4. Where did you grow up ? _____

   How long have you lived in this County ? _____

5. Your age _____

6. Are you currently (check one) single (never married)_____ separated _____

   divorced _____ married _____ widowed _____ ?

7. How many years of school have you completed ? _____

8. What high school(s) did you attend and the last calendar year you attended? _____

   _____

9. If you attended college or vocational school after high school, list: l.the name of the

   school, 2. major type of training, 3. dates attended, 4. degrees or certificates.

   _____

   _____

_____

10. Are you currently: (check one)

    employed full time ___ employed at more than one job ____

    employed part time _____ temporarily laid off _____ unemployed _____

    retired _____ homemaker _____ disabled _____ student _____

11. If employed or temporarily laid off, list occupation, name of employer and duties:

    _____

    _____

12. How long have you worked for this employer? _____

    What previous jobs have you held?_____

    _____

13. Please describe the occupation and education of: other adults in your household

    or, if divorced, your ex-spouse _____

    _____

    your mother _____

    your father _____

14. If you have any children, please list their age, sex, occupation if employed:

    _____

    _____

    _____

    _____

    _____

    _____

15. Have you ever served in the military? Yes _____ No _____

If yes, list the branch, place and date of service, rank at discharge and the type of discharge:

_____

_____

_____

Are you now serving in a reserve unit? Yes ____ No ____

16. Please list the organizations to which you belong, in which you participate, or in which you have ever held any office. For example, service clubs, governmental bodies, unions or professional organizations, volunteer activities, educational or political groups, etc.: _____

_____

_____

_____

Answer this question for other adults in your household:

_____

_____

_____

_____

17. Have you ever served on a jury? Yes _____ No ____

If yes, please list the year or years in which you served and whether the case was civil or criminal:

year	civil or criminal
_____	_____
_____	_____
_____	_____

If you served on a criminal jury was a verdict reached ?

Yes ____ No ____ What was the charge ? _____

_____

_____

_____

18. Have you ever served on a grand jury ? Yes ____ No ____

    If yes, how many cases were presented to the grand jury on which you served?

    _____

    If yes, did the grand jury return an indictment(s) ? Yes ____ No ____

19. Have you ever been called as a witness in court or given a statement in any legal proceeding ? Yes ____ No ____

    If yes, please describe the circumstances:

    _____

    _____

    _____

20. Do you have any close relatives or friends who are lawyers, judges, or are employed in any other job within the legal profession ? Yes ____ No ____

If yes, list the name(s), relationship(s) and occupation(s):

_____

_____

_____

_____

21. Have you or any close relatives or friends ever been sued or sued someone else ?

Yes ____ No ____

If yes, please explain:_____

_____

_____

_____

22. Have you ever had any legal or medical training ?

Yes ____ No ____

If yes, please describe: _____

_____

_____

_____

23. Have you or any close relatives or friends ever been the victim of a crime?

Yes ____ No ____

If yes, please explain: _____

_____

_____

_____

24. Have you ever been a witness to a crime, or ever been questioned by a law enforcement officer about a crime ? Yes ____ No ____

If yes, please explain: _____

_____

_____

_____

25. Have you ever filed a complaint against someone with law enforcement ?

Yes ____ No ____

If yes, please explain: _____

_____

_____

26. Have you or any close relatives or friends ever been charged with or accused of a crime? Yes ____ No ____

If yes, please explain the circumstances and the results:

_____

_____

_____

_____

27. Have you or any close relatives or friends ever worked in law enforcement, such as for a police department, highway patrol, state crime bureau or sheriff ?

Yes ____ No ____

If yes, please list their name(s) occupation(s) and employer(s): _____

_____

_____

_____

28. Have you or any close relatives or friends ever worked for a fire department or rescue squad? Yes _____ No ____

29. Do you have any close relatives or friends who have ever worked as a probation officer or in the prison system?

    Yes ____ No ____

30. Do you have any religious or philosophical beliefs that would make it difficult for you to be a juror? Yes ____ No ____

    If yes, please explain: _____

    _____

    _____

    _____

    _____

31. Do you have any disabilities, physical, mental, or other problems which would make it difficult for you to sit as a juror ? Yes _____ No _____

    If yes, please explain: _____

    _____

    Do you have any limitations on your vision or hearing?

    Yes ____ No ____

    If yes, would a special seating assignment help you follow the trial and enable you to serve on the jury? Yes ____ No ____

32. Have you or any close relatives or friends ever been addicted to anything, such as

alcohol or drugs of any kind ?

Yes ____ No ____

33. Are there any pressing matters that would distract you or prevent you from giving jury service your complete and undivided attention ? Yes ____ No ____

34. If yes, please explain: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I have given complete and honest answers to all of the questions above.

Dated:_____

_____

Signature