RULES GOVERNING CRIMINAL MATTERS

Rules of Criminal Procedure

Minnesota Sentencing Guidelines

Rules of Criminal Procedure

Effective August 1, 1983 Governing All Criminal Actions Commenced or Arrests Made After 12 o'clock Midnight July 31, 1983
With amendments received through July 15, 1984

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TEXT OF RULES

Rule 1. Scope, Application, General Purpose and Construction

1.01 Scope and Application

These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the municipal, county and district courts in the State of Minnesota. Except where expressly provided otherwise, misdemeanors as referred to in these rules shall include state statutes, local ordinances, charter provisions, rules or regulations punishable either alone or alternatively by a fine or by imprisonment of not more than 90 days.

The term "County Court" as used in these rules shall include a Municipal Court, except where expressly stated otherwise.

1.02 Purpose and Construction

These rules are intended to provide for the just, speedy determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 2. Complaint

2.01 Contents; Before Whom Made

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

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

Except as provided in Rules 11.06 and 15.08, the facts establishing probable cause to believe that an offense has been committed and that the defendant committed it shall be set forth separately in writing in or with the complaint, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the issuing officer. If such testimony is taken, a note so stating shall be made on the face of the complaint by the issuing officer. The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed.

2.02 Approval of Prosecuting Attorney

A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed.

2.03 Complaint Forms - Felony or Gross Misdemeanors

For all complaints charging a felony or gross misdemeanor offense the prosecuting attorney or such judge or judicial officer authorized by law to issue process pursuant to Rule 2.02 shall use an appropriate form authorized and supplied by the State Court Administrator. If for any reason such form is unavailable, failure to comply with this rule shall constitute harmless error under Rule 31.01.

Rule 3. Warrant or Summons Upon Complaint

3.01 Issuance

If it appears from the facts set forth separately in writing in or with the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall be issued to

any person authorized by law to execute it, or a summons for the appearance of the defendant shall issue in lieu thereof.

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

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

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

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

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

If a defendant corporation charged with a felony or gross misdemeanor fails to appear in response to a summons, the case shall be transferred to the district court for further proceedings.

3.02 Contents of Warrant or Summons

Subd. 1. Warrant. The warrant shall be signed by the issuing officer and shall contain the name of the defendant, or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint, and the warrant and complaint may be combined in one form. For felonies and gross misdemeanors, the amount of bail and other conditions of release may be set by the issuing officer and endorsed on the warrant. For misdemeanors, the amount of bail shall and other conditions of release may be set by the issuing officer and endorsed on the warrant.

Subd. 2. Directions of Warrant. The warrant shall direct as follows:

(1) Issuance by County or Municipal Court. When the warrant is issued by a county or municipal court, that the defendant be brought promptly before the court that issued the warrant if it is in session.

(2) Available Judge or Judicial Officer. If the county or municipal court specified in Rule 3.02, subd. 2(1) is not in session, that the defendant be brought before a judge or judicial officer of such court, without unnecessary delay, and in any event not later than 36 hours after the arrest exclusive of the day of arrest, or as soon thereafter as such judge or judicial officer is available.

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

3.03 Execution or Service of Warrant or Summons; Certification

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

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

Subd. 3. Manner. The warrant shall be executed by the arrest of the defendant. If the offense charged is a misdemeanor the defendant shall not be arrested on Sunday, or on a legal holiday, or between the hours of 9:00 o'clock p.m.

and 9:00 o'clock a.m. on any other day unless the offense is punishable by incarceration, and then only by direction of the issuing officer, endorsed on the warrant when exigent circumstances exist. The officer need not have the warrant in his possession at the time of the arrest, but shall inform the defendant of the existence of the warrant and of the charge against him.

The summons shall be served on an individual defendant by delivering a copy to him personally or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address. A summons directed to a corporation shall be issued and served in the manner prescribed by law for service of summons on corporations in civil actions or by mail addressed to the corporation at its principal place of business or to an agent designated by the corporation to receive service of process.

Subd. 4. Certification; Unexecuted Warrant or Summons. The officer executing the warrant shall certify the execution thereof to the court before which the defendant is brought.

On or before the date set for appearance the officer or clerk of court to whom a summons was delivered for service shall certify the service thereof to the court before which the defendant was summoned to appear.

At the request of the prosecuting attorney made at any time while the complaint is pending, a warrant returned unexecuted or a summons returned unserved or a duplicate thereof may be delivered by the issuing officer to any authorized officer or person for execution or service.

3.04 Defective Warrant, Summons or Complaint

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

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

(a) that the initial complaint does not properly name or describe the defendant or the offense with which he is charged; or

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

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

Rule 4. Procedure Upon Arrest Under Warrant Following a Complaint or Without a Warrant

4.01 Arrest Under Warrant

A defendant arrested under a warrant issued upon a complaint shall be taken before a court, judge or judicial officer as directed in the warrant.

4.02 Arrest Without a Warrant

Following an arrest without a warrant:

Subd. 1. Release by Arresting Officer. If the arresting officer or his superior determines that further detention is not justified, such officer or his superior shall immediately release the arrested person from custody.

Subd. 2. Citation. The arresting officer or his superior may issue a citation to and release the arrested person as provided by these rules, and must do so if so ordered by the prosecuting attorney or by a judge or judicial officer of the county court of the county where the alleged offense occurred or by a judge of a municipal court in such county or by any person designated by the court to perform that function.

Subd. 3. Notice to Prosecuting Attorney. As soon as practical after the arrest, the arresting officer or his superior shall notify the prosecuting attorney of the arrest.

Subd. 4. Release by Prosecuting Attorney. The prosecuting attorney may order the arrested person released from custody.

Subd. 5. Appearance Before Judge or Judicial Officer.

(1) Before Whom and When. If an arrested person is not released pursuant to this rule or Rule 6, he shall be brought before the nearest available judge of the county court of the county where the alleged offense occurred or judicial officer of such court or judge of a municipal court in such county. He shall be brought before such judge or judicial officer without unnecessary delay, and in any event, not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon thereafter as such judge or judicial officer is available. Provided, however, in misdemeanor cases, if the defendant is not brought before a judge or judicial officer within the 36-hour limit, he shall be released upon citation as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors. At or before the time of the defendant's appearance as required by Rule 4.02, subd. 5(1), a complaint shall be presented to the judge or judicial officer referred to in Rule 4.02, subd. 5(1) or to any judge or judicial officer authorized to issue criminal process upon the offense charged in the complaint. The complaint shall be filed forthwith except as provided by Rule 33.04 and an order for detention of the defendant may be issued, provided (1) the complaint contains the written approval of the prosecuting attorney or the certificate of the judge or judicial officer as provided by Rule 2.02; and (2) the judge or judicial officer determines from the facts set forth separately in writing in or with the complaint and any supporting affidavits or supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant shall be discharged, the complaint and any supporting papers shall not be filed, and no record made of the proceedings.

(3) Complaint or Tab Charge; Misdemeanors. 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, the clerk shall enter upon the records a brief statement of the offense charged including a citation of the statute, rule, regulation, ordinance or other provision of law which the defendant is alleged to have violated. This brief statement shall be a substitute for the complaint and is referred to as a tab charge in these rules. However, if the judge orders, or if requested by the person charged or his attorney, a complaint shall be made and filed. Such 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 supple-

mental 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, 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.

Rule 5. Procedure on First Appearance

5.01 Statement to the Defendant

When a defendant arrested with or without a warrant or served with a summons or citation appears initially before a judge or judicial officer, he shall be advised of the nature of the charge against him. If the defendant has not previously received a copy of the complaint, if any, and supporting affidavits and the transcription of any supplementary testimony, he shall be provided with copies thereof. Upon motion of the prosecuting attorney, the court shall require that the defendant be booked, photographed, and fingerprinted. In cases of felonies and gross misdemeanors, the defendant shall not be called upon to plead.

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

(a) That he is not required to say anything or submit to interrogation and that anything he says may be used against him in this or in any subsequent proceedings;

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

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

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

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

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

5.02 Appointment of Counsel

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 him.

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 him if he 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 his rights. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of his own choosing or by assignment.

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

A defendant who proceeds at the arraignment without counsel does not waive his future right to counsel and the court must inform him that he 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. 3. Standard of Indigency. A defendant is financially unable to obtain counsel if he is financially unable to obtain adequate representation without substantial hardship for himself or his family.

Subd. 4. Financial Inquiry. An inquiry to determine financial eligibility of a defendant for the appointment of counsel 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.

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 for the defendant. The court may require a defendant, to the extent of his ability, to compensate the governmental unit charged with paying the expense of appointed counsel.

5.03 Date of Appearance in District Court; Consolidation of Appearances Under Rule 5 and Rule 8

If the defendant is charged with a felony or gross misdemeanor and has not waived his right to a separate appearance under Rule 8 as provided in this rule, the judge or judicial officer shall set a date for and order the appearance of the defendant before the district court having jurisdiction to try the offense charged in accordance with a schedule or other directive established by order of the district court, which appearance date shall not be later than fourteen (14) days after defendant's initial appearance before such judge or judicial officer.

The defendant shall be informed of the time and place of such appearance. The time for appearance may be extended by the district court for good cause.

Notwithstanding any rule to the contrary, in felony and gross misdemeanor cases, if it has been mutually agreed between the district court and the county court or if ordered by the Supreme Court, the defendant may be permitted to waive the separate initial appearance otherwise required by this rule and Rule 8. Any such waiver shall be made either in writing or orally on the record in open court. If a separate initial appearance is waived by the defendant, all of the functions and procedures provided for by both Rule 5 and Rule 8 shall take place at the one consolidated appearance.

5.04 Plea in Misdemeanor Cases

Subd. 1. Entry of Plea. When a valid complaint has been made and filed, or a brief statement entered on the record as authorized under Rule 4.02, subd. 5(3), the defendant shall be called upon to plead or be given time to plead. The arraignment shall be conducted in open court. A defendant may appear by counsel and a corporation shall appear by counsel or by a duly authorized officer.

Subd. 2. Guilty Plea; Offenses From Other Jurisdictions. If he enters a plea of guilty, the presentencing and sentencing procedures provided by these rules shall be followed. Following a plea of guilty, the defendant may be permitted upon his or his attorney's request, to plead guilty to other misdemeanor offenses committed within the jurisdiction of other county courts in the state provided that such plea has been approved by the prosecuting attorney of the governmental unit in which the offenses are or could be charged. Prior to the acceptance of such a plea, the

defendant shall be tab charged with the offense pursuant to Rule 4.02, subd. 5(3). Entry of such a plea constitutes a waiver of venue.

Any fines imposed and collected upon a guilty plea entered under this rule to an offense arising in another jurisdiction shall be remitted by the clerk of the court imposing the fine to the clerk of the court which originally had jurisdiction over the offense. The clerk of the court of original jurisdiction upon receiving the remittance shall disburse it as required by law for all other similar fines.

Subd. 3. Not Guilty Plea and Jury Trial. If the defendant enters a plea of not guilty to a charge on which he is entitled to a jury trial, he shall be asked whether he wishes to exercise or waive that right. The defendant may waive jury trial either personally in writing or orally on the record in open court. If the defendant fails to waive or demand a jury trial, a jury trial demand shall be entered in the record.

Subd. 4. Demand or Waiver of Evidentiary Hearing. If the defendant pleads not guilty and a notice of evidence and identification procedures has been given by the prosecution as required by Rule 7.01, the defendant and the prosecution shall each either waive or demand an evidentiary hearing as provided by Rule 12.04. Such demand or waiver may be made either orally on the record or in writing and shall be made at the first court appearance after the notice has been given by the prosecution.

Subd. 5. Special Appearances Abolished. Special appearances are abolished and any challenge to the personal jurisdiction of the court shall be decided as provided in Rule 10.02.

5.05 Bail or Release

The judge or judicial officer shall set and advise the defendant of the conditions under which he may be released under these rules for appearance.

5.06 Record

Minutes of the proceedings shall be kept unless the judge or judicial officer directs that a verbatim record thereof shall be made, and provided that any plea of guilty to an offense punishable by incarceration shall comply with the requirements of Rule 13.05 and Rule 15.03.

5.07 Transmission to District Court

If the defendant is charged with a felony or gross misdemeanor, the record and all papers in the proceeding shall be transmitted to the clerk of the district court having jurisdiction to try the offense charged in the complaint.

5.08 First Appearance in District Court

Notwithstanding any rule to the contrary, in felony and gross misdemeanor cases, if it has been mutually agreed between the district court and the county court or if ordered by the Supreme Court, or if a judge or judicial officer of the county court is not available, the first appearance in court of defendants pursuant to Rule 5 may be held before a judge of district court.

Rule 6. Pre-Trial Release

6.01 Release on Citation by Law Enforcement Officer Acting Without Warrant

Subd. 1. Mandatory Issuance of Citation.

(1) For Misdemeanors.

(a) By Arresting Officers. Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an

arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.

(b) At Place of Detention. When a person arrested without a warrant for a misdemeanor or misdemeanors, is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued if the accused signs the citation agreeing to appear as provided in Rule 6.01, subd. 3.

(2) For Misdemeanors, Gross Misdemeanors and Felonies When Ordered by Prosecuting Attorney or Judge. An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue a citation in lieu of continued detention if so ordered by the prosecuting attorney or by the judge of a district, county or municipal court or by any person designated by the court to perform that function.

Subd. 2. Permissive Authority to Issue Citations for Gross Misdemeanors and Felonies. When a law enforcement officer acting without a warrant is entitled to make an arrest for a felony or gross misdemeanor or a person arrested without a warrant for a felony or gross misdemeanor is brought to a police station or county jail, the officer in charge of the police station or the county sheriff in charge of the jail or an officer designated by the sheriff may issue a citation in lieu of arrest or in lieu of continued detention if an arrest has been made, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that the accused may fail to appear in response to the citation.

Subd. 3. Form of Citation. A citation shall direct the accused person to appear before a designated court or violations bureau at a specified time and place, and need not be issued if the accused refuses to sign the citation promising to appear at that time and place. The citation shall state that if the defendant fails to appear in response to the citation, a warrant of arrest may issue.

Subd. 4. Lawful Searches. The issuance of a citation does not affect a law enforcement officer's authority to conduct an otherwise lawful search.

Subd. 5. Persons in Need of Care. Notwithstanding the issuance of a citation, a law enforcement officer may take the cited person to an appropriate medical facility if he appears mentally or physically unable to care for himself.

6.02 Release by Judge, Judicial Officer or Court

Subd. 1. Conditions of Release. Any person charged with an offense shall be released without bail pending his first court appearance when ordered by the prosecuting attorney, the judge of a district or county court, or by any person designated by the court to perform that function. At his appearance before a judge, judicial officer, or court, a person so charged shall be ordered released pending trial or hearing on his personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless the court, judge or judicial officer determines, in the exercise of his discretion, that such a release will be inimical of public safety or will not reasonably assure the appearance of the person as required. When such a determination is made, the court, judge or judicial officer

shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:

(a) Place the person in the care and supervision of a designated person or organization agreeing to supervise him;

(b) Place restrictions on the travel, association or place of abode during his period of release;

(c) Require the execution of an appearance bond in an amount set by the court with sufficient solvent sureties, or the deposit of cash or other sufficient security in lieu thereof; or

(d) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

In any event, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain his release.

The defendant's release shall be conditioned on his appearance at trial or hearing, including the Omnibus Hearing, evidentiary hearing and the pretrial conference prescribed by these rules, or at the taking of any deposition that may be ordered by the court.

Subd. 2. Determining Factors. In determining which conditions of release will reasonably assure such appearance, the judge, judicial officer or court shall on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, his record of appearance at court proceedings or flight to avoid prosecution, and the safety of any other person or of the community.

Subd. 3. Pre-Release Investigation. In order to acquire the information required for determining the conditions of release, an investigation into the accused's background may be made prior to or contemporaneously with the defendant's appearance before the court, judge or judicial officer. The court's probation service or other qualified facility available to the court may be directed to conduct the investigation. Any information obtained from the defendant in response to an inquiry during the course of the investigation and any evidence derived from such information, shall not be used against the defendant at trial. This shall not preclude the use of evidence obtained by other independent investigation.

Subd. 4. Review of Conditions of Release. Upon motion, the court before which the case is pending shall review the conditions of release.

6.03 Violation of Conditions of Release

Subd. 1. Warrant. Upon an application of the prosecuting attorney alleging that a defendant has violated the conditions of his release, the judge, judicial officer or court that released the defendant may issue a warrant directing that the defendant be arrested and taken forthwith before such judge, judicial officer or court. A summons directing the defendant to appear before such judge, judicial officer or court at a specified time shall be issued instead of a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown.

Subd. 2. Arrest Without Warrant. A law enforcement officer having probable cause to believe that a released defendant has violated the conditions of his release may, if it is impracticable to secure a warrant or summons as provided in this rule, arrest the defendant and take him forthwith before such judge, judicial officer or court. In a misdemeanor case, a citation shall be issued in lieu of an arrest or

continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or that there is a substantial likelihood that the defendant will fail to respond to the citation.

Subd. 3. Hearing. After hearing and upon finding that the defendant has violated conditions imposed on his release, the judge, judicial officer or court shall continue the release upon the same conditions or impose different or additional conditions for defendant's possible release as provided for in Rule 6.02, subd. 1.

Subd. 4. Commission of Crime. When it is shown that a complaint has been filed or indictment returned charging a defendant with the commission of a crime while released pending adjudication of a prior charge, the court with jurisdiction over the prior charge may, after notice and hearing, review and revise the conditions of his possible release as provided for in Rule 6.02, subd. 1.

6.04 Forfeiture

The procedure for forfeiture of an appearance bond shall be as provided by the law.

6.05 Supervision of Detention

The trial court shall exercise supervision over the detention of defendants within the court's jurisdiction for the purpose of eliminating all unnecessary detention. The officer in charge of a detention facility shall make at least bi-weekly reports to the prosecuting attorney and to the court having jurisdiction over the prisoners listing each defendant who has been held in custody pending criminal charges, arraignment, trial, sentence or revocation of probation or parole for a period in excess of ten (10) days in felony and gross misdemeanor cases, and in excess of two (2) days in misdemeanor cases.

6.06 Trial Date in Misdemeanor Cases

A defendant shall be tried as soon as possible after entry of a not guilty plea. On demand made in writing or orally on the record by the prosecuting attorney or the defendant, the defendant shall be tried within sixty (60) days from the date of the demand unless good cause is shown by the prosecution or defendant why he should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea. Where the defendant is in custody, he shall be tried within ten (10) days of his demand and if not so tried, he shall be released subject to such nonmonetary release conditions as may be required by the court under Rule 6.02, subd. 1.

Rule 7. Notice by Prosecuting Attorney of Evidence and Identification Procedures; Completion of Discovery

7.01 Notice of Evidence and Identification Procedures

In any case where a jury trial is to be held, when the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping; (2) any confessions, admissions or statements in the nature of confessions made by the defendant; (3) any evidence against the defendant discovered as a result of confessions, admissions or statements in the nature of confessions made by the defendant; or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney shall notify the defendant or his counsel of such evidence and identification procedures. In felony and gross misdemeanor cases notice shall be given in writing on or before the date set for the defendant's initial appearance in the district court as provided by Rule 5.03. In misdemeanor cases, notice shall be given either in writing or orally on the record in court on or before

the date set for the defendant's pretrial conference if one is scheduled or seven (7) days before trial if no pretrial conference is to be held.

Such written notice may be given either personally or by ordinary mail to the defendant's or his counsel's last known residential or business address or by leaving it at such address with a person of suitable age and discretion then residing or working there.

7.02 Notice of Additional Offenses

The prosecuting attorney shall notify the defendant or his counsel in writing of any additional offenses, the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. In cases of felonies and gross misdemeanors, the notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offenses become known to the prosecuting attorney. In misdemeanor cases, the notice shall be given at or before the pretrial conference under Rule 12 if held or as soon thereafter as the offense becomes known to the prosecuting attorney. If no pretrial conference is held, then the notice shall be given at least seven (7) days before trial or as soon thereafter as known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which he has been previously prosecuted or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged against defendant arose.

7.03 Completion of Discovery

Before the date set for the Omnibus Hearing, in felonies and gross misdemeanor cases, the prosecution and defendant shall complete the discovery that is required by Rule 9.01, subds. 1 and 2 to be made without the necessity of an order of court.

In misdemeanor cases, without order of the court the prosecuting attorney on request of the defendant or his attorney shall, prior to arraignment or at any time before trial, permit the defendant or his attorney to inspect the police investigatory reports. Any other discovery shall be by consent of the parties or by motion to the court.

Rule 8. Defendant's Initial Appearance Before the District or County Court Following the Complaint in Felony and Gross Misdemeanor Cases

8.01 Place of Appearance and Arraignment

The defendant's initial appearance under this rule shall be held in the district court of the judicial district where the alleged offense was committed. If it has been mutually agreed between the district court and the county court, or if ordered by the Supreme Court, the appearance may be referred to the county court of the county where the alleged offense was committed. The procedures upon an initial appearance in county court shall be the same as in district court.

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, but may only enter a plea of guilty at that time. If the defendant does not wish to plead guilty, he shall not be called upon to enter any other plea and the arraignment shall be continued until the Omnibus Hearing when pursuant to Rule 11.10 he 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.

8.02 Plea of Guilty

At an initial appearance, whether in district court or in county court pursuant to Rule 8.01, the defendant may enter a plea of guilty to a felony, a gross misdemeanor, or a misdemeanor as permitted under Rule 15. If he enters a plea of guilty, the pre-sentencing and sentencing procedures provided by these rules shall be followed.

8.03 Demand or Waiver of Hearing

If the defendant does not plead guilty, the defendant and the prosecution shall each either waive or demand a hearing as provided by Rule 11.02 on the admissibility at trial of any of the evidence specified in the notice given by the prosecuting attorney under Rule 7.01 or the admissibility of any evidence obtained as a result of such evidence.

8.04 Plea and Time and Place of Omnibus Hearing

(a) If the defendant does not plead guilty, the Omnibus Hearing on the issues as provided for by Rules 11.03 and 11.04, shall be held within the time hereinafter specified.

(b) If hearing on either of the issues set forth in Rule 8.03 is demanded, the Omnibus Hearing shall also include the issues provided for by Rule 11.02.

(c) The Omnibus Hearing provided for by Rule 11 shall be scheduled for a date not later than fourteen (14) days after the defendant's initial appearance before the court. The court may extend such time for good cause upon motion of the defendant or the prosecution or upon the court's own motion.

8.05 Record

A verbatim record shall be made of the proceedings at the defendant's initial appearance before the court under this rule.

8.06 Conditions of Release

In accordance with the rules governing bail or release, the court may continue or amend those conditions for defendant's release set by the court previously.

Rule 9. Discovery in Felony and Gross Misdemeanor Cases

9.01 Disclosure by Prosecution

Subd. 1. Disclosure by Prosecution Without Order of Court. Without order of court, the prosecuting attorney on request of defense counsel shall, before the date set for Omnibus Hearing provided for by Rule 11, make the following disclosures:

(1) Trial Witnesses; Grand Jury Witnesses.

(a) The prosecuting attorney shall disclose to defense counsel the names and addresses of the persons whom he intends to call as witnesses at the trial together with their prior record of convictions, if any, within his actual knowledge. He shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within his knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents.

(b) The fact that the prosecution has supplied the name of a trial witness to defense counsel shall not be commented on in the presence of the jury.

(c) If the defendant is charged by indictment, the prosecuting attorney shall disclose to defense counsel the names and addresses of the witnesses who testified before the grand jury in the case against the defendant.

(2) Statements of Defendants and Accomplices. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any relevant

written or recorded statements made by defendants and accomplices within the possession or control of the prosecution, the existence of which is known by the prosecuting attorney, and shall provide defense counsel with the substance of any oral statements made by defendants and accomplices, whether before or after arrest, which the prosecution intends to offer in evidence at the trial.

(3) Documents and Tangible Objects. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce books, papers, documents, photographs and tangible objects which the prosecuting attorney intends to introduce in evidence at the trial, or which were obtained from or belong to the defendant, or concerning which the prosecuting attorney intends to offer evidence at the trial; and the prosecuting attorney shall also permit defense counsel to inspect and photograph buildings or places concerning which the prosecuting attorney intends to offer evidence at the trial.

(4) Reports of Examinations and Tests. The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made in connection with the particular case.

(5) Criminal Record of Defendant and Defense Witnesses. The prosecuting attorney shall inform defense counsel of the records of prior convictions of the defendant and of any defense witnesses disclosed under Rule 9.02, subd. 1(3)(a) that are known to the prosecuting attorney provided the defense counsel informs the prosecuting attorney of any such records known to the defendant.

(6) Exculpatory Information. The prosecuting attorney shall disclose to defense counsel any material or information within his possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

(7) Scope of Prosecutor's Obligations. The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office.

Subd. 2. Discretionary Disclosure Upon Order of Court. Upon motion of the defendant with notice to the prosecuting attorney, the trial court at any time before trial or a county or municipal court at the Omnibus Hearing provided by Rule 11 may, in its discretion, require the prosecuting attorney to disclose to defense counsel and to permit the inspection, reproduction or testing of any relevant material and information not subject to disclosure without order of court under Rule 9.01, subd. 1, provided, however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate the guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant shall inspect and preserve any such relevant material and information.

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

(1) Work Product.

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

(b) Reports. Except as provided in Rules 9.01, subd. 1(1) to (6), reports, memoranda or internal documents made by the prosecuting attorney or members of his staff or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

(2) Prosecution Witnesses Under Prosecuting Attorney's Certificate. The information relative to the witnesses and persons described in Rules 9.01, subd. 1(1), (2) shall not be subject to disclosure if the prosecuting attorney files a written certificate with the trial court that to do so may subject such witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses or persons are sworn to testify at the trial.

9.02 Disclosure by Defendant

Subd. 1. Information Subject to Discovery Without Order of Court. Without order of court, the defendant on request of the prosecuting attorney shall, before the date set for the Omnibus Hearing provided for by Rule 11, make the following disclosures:

(1) Documents and Tangible Objects. The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce books, papers, documents, photographs, and tangible objects which the defendant intends to introduce in evidence at the trial or concerning which the defendant intends to offer evidence at the trial, and shall also permit the prosecuting attorney to inspect and photograph buildings or places concerning which the defendant intends to offer evidence at the trial.

(2) Reports of Examinations and Tests. The defendant shall disclose and permit the prosecuting attorney to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular case within the possession or control of the defendant which he intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(3) Notice of Defense and Defense Witnesses and Criminal Record.

(a) Notice of Defense. The defendant shall inform the prosecuting attorney in writing of any defense, other than that of not guilty, on which the defendant intends to rely at the trial, including but not limited to the defense of self-defense, entrapment, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, defense under Minn. Stat., sec. 609.035, or intoxication. The defendant shall supply the prosecuting attorney with the names and addresses of persons whom the defendant intends to call as witnesses at the trial together with their record of convictions, if any, within his actual knowledge.

If the defendant gives notice that he intends to rely on the defense of mental illness or mental deficiency he shall also notify the prosecuting attorney whether he also intends to rely on the defense of not guilty.

(b) Statements of Defense and Prosecution Witnesses. The defendant shall permit the prosecuting attorney to inspect and reproduce any relevant written or recorded statements of the persons whom the defendant intends to call as witnesses at the trial and also statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense, and which are within the possession or control of the defendant and shall permit the prosecuting attorney to inspect and reproduce any written summaries within his knowledge of the substance of any oral statements made by such witnesses to defense counsel or obtained by the defendant at the direction of his counsel.

(c) Alibi. If the defendant intends to offer evidence of an alibi, the defendant shall also inform the prosecuting attorney of the specific place or places where the defendant contends he was when the alleged offense occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses he intends to call at the trial in support of the alibi.

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

(d) Criminal Record. Defense counsel shall inform the prosecuting attorney of any prior convictions of the defendant provided the prosecuting attorney informs defense counsel of the record of prior convictions known to the prosecuting attorneys.

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

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

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

Subd. 2. Discovery Upon Order of Court.

(1) Disclosures Permitted. Upon motion of the prosecuting attorney with notice to defense counsel and a showing that one or more of the discovery procedures hereafter described will be of material aid in determining whether the defendant committed the offense charged, the trial court at any time before trial, or the county or municipal court, either when the defendant is admitted to bail or otherwise released, or at the Omnibus Hearing prescribed by Rule 11 may, subject to constitutional limitations, order a defendant to:

(a) Appear in a lineup;

(b) Speak for identification by witnesses to an offense or for the purpose of taking voice prints;

(c) Be fingerprinted or permit his palm prints or footprints to be taken;

(d) Permit measurements of his body to be taken;

(e) Pose for photographs not involving re-enactment of a scene;

(f) Permit the taking of samples of his blood, hair, saliva, urine, and other materials of his body which involve no unreasonable intrusion thereof; provided, however, that the court shall not permit a blood test to be taken except upon a showing of probable cause to believe that the test will aid in establishing the guilt of the defendant;

(g) Provide specimens of his handwriting; and

(h) Submit to reasonable physical or medical inspection of his body.

(2) Notice of Time and Place of Disclosures. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place thereof shall be given by the prosecuting attorney to defense counsel.

(3) Medical Supervision. Blood tests shall be conducted under medical supervision, and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the defendant, the court may order the defendant's appearance delayed for a reasonable time or may order that it take place at his residence, or some other convenient place.

(4) Notice of Results of Disclosure. Unless otherwise ordered by the court, the prosecuting attorney, within five (5) days from the date the results of the

discovery procedures provided by this rule become known to him, shall make available to defense counsel a report of the results.

(5) Other Methods Not Excluded. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining the evidence discoverable under the rule.

Subd. 3. Information Not Subject to Disclosure by Defendant; Work Product. Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent they contain the opinions, theories, or conclusions of the defendant or his counsel or persons participating in the defense are not subject to disclosure.

Subd. 4. Failure to Call Witness. The fact that a witness' name is on a list furnished by defendant to the prosecution under this rule shall not be commented on in the presence of the jury.

9.03 Regulation of Discovery

Subd. 1. Investigations Not to be Impeded. Except as otherwise provided as to matters not subject to discovery or covered by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the accused) to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials, nor shall they otherwise impede opposing counsel's investigation of the case.

Subd. 2. Continuing Duty to Disclose.

(a) If subsequent to compliance with any discovery rule or order, a party discovers additional material, information or witnesses subject to disclosure, he shall promptly notify the other party of the existence of the additional material or information and the identity of the witnesses.

(b) Each party shall have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3. Time, Place and Manner of Discovery and Inspection. An order of the court granting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4. Custody of Materials. Any materials furnished to an attorney under discovery rules or orders shall remain in his custody and be used by him only for the purpose of conducting his side of the case, and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5. Protective Orders. Upon a showing of cause, the trial court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate. All material and information to which a party is entitled must be disclosed in time to afford his counsel the opportunity to make beneficial use of it.

Subd. 6. In Camera Proceedings. Upon application of any party with notice to the adverse party, the trial court upon a showing of good cause therefor may permit any showing of cause for denial or regulation of discovery, or portion of such showing, to be made in camera. A record shall be made of the proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal, habeas corpus proceedings, or post-conviction proceedings under Minn. Stat., sections 590.01 - 590.06 (1971).

Subd. 7. Excision. When some parts of certain material are discoverable under these rules, and other parts not discoverable, as much of the material shall be disclosed as is consistent with discovery rules. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court to be made available

to the reviewing court in the event of an appeal, habeas corpus proceeding, or post-conviction proceedings under Minn. Stat., sections 590.01 - 590.06 (1971).

Subd. 8. Sanctions. If at any time it is brought to the attention of the trial court that a party has failed to comply with an applicable discovery rule or order, the court may upon motion and notice order such party to permit the discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances. Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 9. Filing. Unless the court orders otherwise for the purpose of a hearing or trial, discovery disclosures made pursuant to Rule 9 shall not be filed under the provisions of Rule 33.04.

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

Rule 10. Pleadings and Motions Before Trial; Defenses and Objections

10.01 Pleadings and Motions

Pleadings in criminal proceedings shall be by the indictment, complaint or tab charge and the pleas prescribed by these rules. Defenses, objections, issues, or requests which are capable of determination without trial on the merits shall be asserted or made before trial by a motion to dismiss or to grant appropriate relief.

10.02 Motions Attacking Jurisdiction of the Court in Misdemeanor Cases

A motion to dismiss for want of personal jurisdiction shall not be made until after a complaint is filed and a not guilty plea entered unless the motion is heard and determined summarily. Notice of such a motion shall be given either orally on the record in court or in writing to the prosecution. Such notice shall be given no more than seven (7) days after entry of the not guilty plea or any challenge to the personal jurisdiction of the Court is waived unless the court for good cause shown grants relief from the waiver. The motion shall be served, heard and determined.

10.03 Waiver

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

10.04 Service of Motions; Hearing Date

Subd. 1. Service. In felony and gross misdemeanor cases, motions shall be made in writing and served upon opposing counsel not later than three (3) days before the Omnibus Hearing unless the court for good cause shown permits the motion to be made and served at a later time.

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

Subd. 2. Hearing Date. In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it shall be heard at that hearing and shall be determined before trial as provided by Rule 11.

In misdemeanor cases, if a pretrial conference is held, the motion shall be heard there unless the court directs otherwise for the purpose of hearing witnesses or for

other good cause. If the motion is not heard at a pretrial conference, it shall be heard immediately prior to trial, provided that the court may upon agreement by the prosecutor and defense counsel summarily hear and determine the motion at arraignment. If the motion is heard at the arraignment, it need not be in writing, but a record shall be made of the proceedings and in the court's discretion witnesses may be called. The motion shall be determined before trial as provided by Rule 12.07.

Rule 11. Omnibus Hearing in Felony and Gross Misdemeanor Cases

If the defendant does not plead guilty at his initial appearance before the district court following a complaint, a hearing shall be held as follows:

11.01 Reference to County or Municipal Court

The hearing shall be held in the district court in the judicial district wherein the alleged offense was committed. In cases wherein it is mutually agreed between the district court and the county or municipal court, or when ordered by the Supreme Court, the hearing may be referred to the county court or municipal court of the county wherein the alleged offense was committed.

11.02 Hearing on Evidentiary Issues

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.

Subd. 2. Cross-Examination. Upon such hearing, the defendant and the prosecution may cross-examine the other's witnesses.

11.03 Motions

The court shall hear and determine all motions made by the defendant or prosecution, including a motion that there is an insufficient showing of probable cause to believe that the defendant committed the offense charged in the complaint, and receive such evidence as may be offered in support or opposition. Each party may cross-examine any witnesses produced by the other. A finding by the court of probable cause shall be based upon the entire record including reliable hearsay in whole or in part. Evidence considered on the issue of probable cause shall be subject to the requirements of Rule 18.06, subd. 1.

11.04 Other Issues

The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose.

If the prosecution has given notice under Rule 7.02 of intention to offer evidence of additional offenses, upon motion a hearing shall be held to determine their admissibility under Rule 404(b) of the Minnesota Rules of Evidence and whether there is clear and convincing evidence that defendant committed the offenses.

If the defendant intends to offer evidence of a victim's previous sexual conduct in a prosecution for violation of Minn. Stat., sections 609.342 to 609.346, a motion shall be made pursuant to the procedures prescribed by Rule 404(c) of the Minnesota Rules of Evidence.

11.05 Amendment of Complaint

The complaint may be amended as prescribed by these rules.

11.06 Pleas

At the hearing, whether in the district court or in the county court pursuant to Rule 11.01, the defendant may be permitted to plead to the offense charged in the

complaint or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15.

11.07 Continuances; Determination of Issues

The court may continue the hearing or any part thereof from time to time as may be necessary. All issues presented at the Omnibus Hearing shall be determined before trial. When issues are determined, the court shall make appropriate findings in writing or orally on the record. The issues presented at the Omnibus Hearing shall be consolidated for hearing.

11.08 Record

Subd. 1. Recording. A verbatim record of the proceedings shall be made.

Subd. 2. Transcript. Upon timely application to the reporter, counsel for the defendant or for the prosecution shall be furnished with a transcript of the proceedings upon the following conditions:

(a) If the transcript is to be furnished to defense counsel, the costs thereof shall be prepaid except when the defendant is represented by the public defender or assigned counsel, or when the defendant makes a sufficient affidavit that he is unable to pay or secure the costs and the court orders that he be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The prosecution shall be furnished with the transcript without prepayment of costs.

(c) When a transcript is furnished to counsel, a copy shall be filed with the clerk of the court.

Subd. 3. Filing. The record and all papers and exhibits in the proceeding shall be filed or placed in the custody of the clerk of the court. Upon order of the court any exhibit may be returned to the party producing it.

11.09 Review

In the event the hearing is held before a county or municipal court, the findings and determinations on the issues presented shall be given the same force and effect as findings and determinations made by the district court.

11.10 Plea; Trial Date

If the defendant is not discharged he shall plead to the complaint or be given additional time within which to plead. If he pleads not guilty, a trial date shall then be set. A defendant shall be tried as soon as possible after entry of a 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 by the prosecution or defendant why he should not be brought to trial within that period. The time period shall not begin to run earlier than the date of the not guilty plea.

11.11 Exclusion of Witnesses

Before or during any Omnibus or other pretrial hearing or proceeding, witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.

Rule 12. Pretrial Conference and Evidentiary Hearing in Misdemeanor Cases

12.01 Pretrial Conference

A pretrial conference may be held in such cases and at such time as the court orders to consider the motions and other issues referred to in Rules 12.02 and 12.03. Such motions and other issues shall be heard immediately prior to trial whenever there has been no pretrial conference or whenever the court has so ordered for the purpose of hearing witnesses or for other good cause.

12.02 Motions

The court shall hear and determine all motions made by the defendant or prosecution and receive such evidence as may be offered in support or opposition. The defendant may offer evidence in his own behalf, and the defendant and prosecution may cross-examine the other's witnesses.

12.03 Other Issues

The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose.

If the prosecution has given notice under Rule 7.02 of intention to offer evidence of additional offenses, upon motion a hearing shall be held to determine their admissibility under Rule 404(b) of the Minnesota Rules of Evidence and whether there is clear and convincing evidence that defendant committed the offenses.

12.04 Hearing on Evidentiary Issues

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.

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

Subd. 3. Time. Any evidentiary hearing shall be held separately from the trial when the trial is to be before a jury and in the discretion of the court may be held either separately or as part of the trial when the trial is to the court. Any separate hearing shall be held immediately prior to trial unless the court for good cause otherwise orders.

12.05 Amendment of Complaint

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

12.06 Pleas

At the pretrial conference the defendant may be permitted to withdraw any prior plea and to enter a plea of guilty to the offense charged or such other different offense as permitted in Rule 15.08.

12.07 Continuances; Determination of Issues

The court may continue the pretrial conference as necessary and for the purpose of taking testimony or other good cause, and may continue the determination of any issues or motions until the day of trial. All motions and issues including those raised at the evidentiary hearing shall be determined before trial begins unless otherwise agreed to by the prosecution and the defense. When the motions and issues are determined, the court shall make appropriate findings in writing or orally on the record.

12.08 Record

Subd. 1. Record. Unless waived by counsel, a verbatim record of the proceedings at the evidentiary hearing shall be made.

Subd. 2. Transcript and Filing. Transcript and filing shall be governed by the provisions of Rule 11.08, subd. 2 and subd. 3.

Rule 13. Arraignment in Felony and Gross Misdemeanor Cases

The arraignment shall be conducted as follows:

13.01 In Open Court

The arraignment shall be conducted in open court.

13.02 Right to Counsel

If the defendant other than a corporation appears without counsel, the court shall advise him of his right to counsel, and when required, shall appoint counsel pursuant to Rule 5.02.

13.03 Copy and Reading of Charges

The defendant shall be provided with a copy of the complaint or indictment if he has not previously received a copy. The complaint or indictment shall be read to him unless he waives the reading.

13.04 Plea

The defendant shall be called on to plead or may be given time to plead.

13.05 Record

A verbatim record of the arraignment shall be made.

Rule 14. Pleas

14.01 Pleas Permitted

A defendant may plead as follows:

(a) Guilty.

(b) Not guilty.

(c) Not guilty by reason of mental illness or mental deficiency.

(d) Double jeopardy or that prosecution is barred by Minn. Stat., sec. 609.035 (1971), either of which may be pleaded with or without the plea of not guilty.

14.02 Who May Plead

Subd. 1. By an individual in felony and gross misdemeanor cases. A plea to an indictment or complaint by an individual defendant shall be made orally on the record by the defendant in person.

Subd. 2. By an individual in misdemeanor cases. A plea to a complaint or tab charge by an individual defendant shall be made orally on the record or by the petition to plead guilty provided for in Rule 15.03, subd. 2. If the court is satisfied that the defendant has knowingly and voluntarily waived his right to be present, the plea may be entered by counsel.

Subd. 3. By a corporation. A plea by a corporate defendant shall be made by counsel or a corporate officer, and shall be made orally on the record or in writing.

Subd. 4. Defendant's Refusal to Plead. If the defendant stands mute or refuses to plead, or if the court refuses to accept a plea of guilty, the court shall proceed as if the defendant had entered a plea of not guilty.

If a defendant corporation fails to appear, the court upon proof of the commission of the offense charged may enter judgment of conviction and impose such sentence as may be appropriate.

14.03 Time of Plea

At any time during the proceedings, except as provided by Rule 8.01, a defendant may appear before the court to enter a plea of guilty to the offense charged or to some other offense pursuant to a plea agreement reached under Rule 15.04. To schedule such an appearance, the defendant shall file a written request with the clerk of court indicating the offense to which he wishes to plead guilty. Upon receiving such a request, the clerk shall schedule an appearance before the court at the earliest available date, which date, in any event, shall be not later than fourteen days after the filing of the request. The clerk shall then notify the

defendant and the prosecuting attorney of the time and place of such court appearance.

(Added March 31, 1977, effective July 1, 1977.)

Rule 15. Procedure Upon Plea of Guilty; Plea Agreements; Plea Withdrawal; Plea to Lesser Offense

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

Before the court accepts a plea of guilty, the defendant shall be sworn and questioned by the court with the assistance of counsel as to the following:

1. Name, age and date and place of birth.

2. Whether he understands the charge against him.

3. Specifically, whether he understands that he has been charged with the crime of (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota (and that he is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser included offense of the crime charged).

4. a. Whether he has had sufficient time to discuss the case with his attorney.

b. Whether he is satisfied that his attorney is fully informed as to the facts of the case, and that his attorney has represented his interests and fully advised him.

5. Whether he has been told by his attorney and understands that if he wishes to plead not guilty, he is entitled to a trial by a jury of 12 persons, and that he cannot be found guilty unless all 12 persons agree.

6. a. Whether he has been told by his attorney and understands that he will not have a trial by either a jury or by a judge without a jury if he pleads guilty.

b. Whether he waives his right to a trial.

7. Whether he has been told by his attorney, and understands that if he wishes to plead not guilty and have a trial by jury or by a judge, he will be presumed to be innocent until his guilt is proved beyond a reasonable doubt.

8. a. Whether he has been told by his attorney, and understands that if he wishes to plead not guilty and have a trial, the prosecutor will be required to have the witnesses against him testify in open court in his presence, and that he will have the right, through his attorney, to question these witnesses.

b. Whether he waives his right to have these witnesses testify in his presence in court and be questioned by his attorney.

9. a. Whether he has been told by his attorney and understands that if he wishes to plead not guilty and have a trial, he will be entitled to require any witnesses he thinks are favorable to him appear and testify.

b. Whether he waives this right.

10. Whether his attorney has told him and he understands:

a. That the maximum penalty that the court could impose for the crime with which he is 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 with which he is charged.

11. Whether his attorney has told him that he discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if he entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)

12. Whether his attorney has told him and he understands that if the court does not approve the plea agreement, he has an absolute right to withdraw his plea of guilty and have a trial.

13. Whether, except for the plea agreement, any policeman, prosecutor, judge, his attorney, or any other person, made any promises to him or any member of his family, or any of his friends, or other persons, or threatened him or any member of his family, or any of his friends, or other persons, in order to obtain a plea of guilty from him.

14. Whether his attorney has told him and he understands that if his plea of guilty is for any reason not accepted by the court, or is withdrawn by him with the court's approval, or is withdrawn by court order on appeal or other review, that he will stand trial on the original charge (charges) against him namely, (state the offense) (which would include any charges that were dismissed as a result of the plea agreement with his attorney) and that the prosecution could proceed just as if there had never been any agreement.

15. a. Whether he has been told by his attorney and understands, that if he wishes to plead not guilty and have a jury trial, he can testify if he wishes, but that if he decided not to testify, neither the prosecutor nor the judge could comment to the jury about his failure to testify.

b. Whether he waives this right, and agrees to tell the court about the facts of the crime.

16. Whether with knowledge and understanding of his rights he still wishes to enter a plea of guilty or whether he wishes to plead not guilty.

17. Whether he makes any claim that he is innocent.

18. Whether he is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.

19. Whether he has any questions to ask or anything to say before he states the facts of the crime.

20. What is the factual basis for his plea.

(NOTE: It is desirable that the defendant also be asked to acknowledge that he has signed the Petition to Plead Guilty, suggested form of which is contained in the Appendix A to these rules; that he has read the questions set forth in the petition or that they have been read to him, and that he understands them; that he gave the answers set forth in the petition; and that they are true.)

15.02 Acceptance of Plea; Questioning Defendant; Misdemeanor Cases

Before the court accepts a plea of guilty to any offense punishable upon conviction by incarceration, any plea agreement shall be explained in open court. The defendant shall then be questioned by the court or counsel in substance as follows:

1. Specifically whether he understands that he has been charged with the crime of (name the offense) committed on or about (Month) (Day) (Year) in _____ County, Minnesota (and that he is tendering a plea of guilty to the crime of (name of offense)).

2. Whether he 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.)

3. Whether he knows that he has a right to the assistance of counsel at every stage of the proceedings and that counsel will be appointed for him if he cannot afford counsel.

4. Whether he knows that he has a right;

(a) to trial by a jury of 6 persons;

(b) to confront witnesses against him;

(c) to subpoena witnesses for him;

(d) to remain silent at trial or at any other time; and

(e) that he is presumed innocent and the State must prove its case beyond a reasonable doubt.

5. Whether he waives these rights.

6. Whether he understands the nature of the offense charged.

7. Whether he believes that what he did constitutes the offense to which he is pleading guilty.

The court shall then determine whether there is a factual basis for the plea.

Where the guilty plea is being entered at the defendant's first appearance in court, the statement as to his rights required by Rule 5.01 may be combined with the questioning required above prior to entry of a guilty plea.

(Amended April 14, 1980, effective July 1, 1980.)

15.03 Alternative Methods in Misdemeanor Cases

Subd. 1. Group Warnings. The court may advise a number of defendants at once as to the consequences of a plea and as to their constitutional rights as specified in questions 2, 3 and 4 above. When such a procedure is followed the court's statement shall be recorded and each defendant when called before the court shall be asked whether he heard and understood the statement. He shall then be questioned on the record as to the remaining matters specified in Rule 15.02.

Subd. 2. Petition to Plead Guilty. The defendant or his attorney may file with the court a petition to plead guilty as provided for in the Appendix B to Rule 15 signed by the defendant indicating that he is pleading guilty to the specified misdemeanor offense with the understanding and knowledge required of defendants personally entering a guilty plea under Rule 15.02.

15.04 Plea Discussion and Plea Agreements

Subd. 1. Propriety of Plea Discussions and Plea Agreements. In cases in which it appears that it would serve the interest of the public in the effective administration of criminal justice under the principles set forth in Rule 15.04, subd. 3(2), the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He shall engage in plea discussions and reach a plea agreement with defendant only through defense counsel.

Subd. 2. Relationship Between Defense Counsel and Defendant. Defense counsel shall conclude a plea agreement only with the consent of the defendant and shall ensure that the decision to enter a plea of guilty is ultimately made by the defendant.

Subd. 3. Responsibilities of the Trial Court Judge.

(1) Disclosure of Plea Agreement. If a plea agreement has been reached which contemplates entry of a plea of guilty, the trial court judge may permit the disclosure to him of the agreement and the reasons therefor in advance of the time for tender of the plea. When such plea is tendered and the defendant questioned, the trial court judge shall reject or accept the plea of guilty on the terms of the plea agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-sentence investigation. If the court rejects the plea agreement, it shall so advise the parties in open court and then call upon the defendant to either affirm or withdraw his plea.

(2) Consideration of Plea in Final Disposition. The court may accept a plea agreement of the parties when the interest of the public in the effective administration of justice would thereby be served. Among the considerations which are appropriate in determining whether such acceptance should be given are:

(a) That the defendant by his plea has aided in ensuring the prompt and certain application of correctional measures to him;

(b) That the defendant has acknowledged his guilt and shown a willingness to assume responsibility for his conduct;

(c) That the concessions will make possible the application of alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant;

(d) That the defendant has made trial unnecessary when there are good reasons for not having a trial;

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

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

15.05 Plea Withdrawal

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

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

Subd. 3. Withdrawal of Guilty Plea Without Asserting Innocence. The defendant may move to withdraw his plea of guilty without asserting that he is not guilty of the charge to which the plea was entered.

15.06 Plea Discussions and Agreements Not Admissible

If the defendant enters a plea of guilty which is not accepted or which is withdrawn, neither the plea discussions, nor the plea agreement, nor the plea shall be received in evidence against or in favor of the defendant in any criminal, civil, or administrative proceeding.

15.07 Plea to Lesser Offenses

With the consent of the prosecuting attorney and the approval of the court, the defendant shall be permitted to enter a plea of guilty to a lesser included offense or to an offense of lesser degree. Upon motion of the defendant and hearing thereon the court may accept a plea of guilty to a lesser included offense or to an offense of lesser degree, provided the court is satisfied following hearing that the prosecution cannot introduce evidence sufficient to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the indictment, complaint or tab charge.

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, 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, 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.

(Amended March 31, 1977, effective July 1, 1977; April 14, 1980, effective July 1, 1980.)

15.09 Record of Proceedings

Upon a guilty plea to an offense punishable by incarceration, either a verbatim record of the proceedings shall be made, or in the case of misdemeanors, a petition to enter a plea of guilty, as provided in the Appendix B to Rule 15, shall be filed with the court. In felony and gross misdemeanor cases, any verbatim record made in accordance with this rule shall be transcribed. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

APPENDIX A TO RULE 15

STATE OF MINNESOTA
COUNTY OF _____

IN DISTRICT COURT
_____ JUDICIAL DISTRICT

- - - - - - - - - - - - - - -

State of Minnesota,
vs.
_____

PETITION TO ENTER PLEA OF GUILTY

- - - - - - - - - - - - - - -

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. I have received, read and discussed 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).

5. I am represented by an attorney whose name is _____ and:

a. I feel that I have had sufficient time to discuss my case with my attorney.

b. I am satisfied that my attorney is fully informed as to facts of this case.

c. My attorney has discussed possible defenses to the crime that I might have.

d. I am satisfied that my attorney has represented my interests and has fully advised me.

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 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. My attorney has told me and I understand:

a. That the prosecutor for his 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 have been told by my attorney and I understand:

a. That if I wish to plead not guilty I am entitled to a trial by a jury of 12 persons and all 12 persons 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 have been told by my attorney and I understand that if I wish to plead not guilty and have a trial by jury or trial by a judge I would be presumed innocent until my guilt is proved beyond a reasonable doubt.

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

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, through my attorney, 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 my attorney, I now waive this right.

18. I have been told by my attorney and 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 knowledge of my right to require favorable witnesses to appear and testify at trial I now waive this right.

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

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.

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

a. That he discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney 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 my attorney and the prosecuting attorney:

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

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

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

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

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

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

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

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

c. That with 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 above facts and considerations I wish to enter a plea of guilty.

Dated this ____ day of _____, 19__

_____

DEFENDANT

APPENDIX B TO RULE 15

STATE OF MINNESOTA
COUNTY OF _____

IN COUNTY COURT
CIVIL AND CRIMINAL DIVISION
FILE NO. _____

State of Minnesota,
City of _____,
Plaintiff,

vs.

_____
Defendant

PETITION TO ENTER PLEA OF GUILTY

TO: THE ABOVE NAMED COURT

_____, defendant in the above entitled action respectfully represents and states as follows:

1. That he is charged with (name of offense) in violation of (statute or ordinance);

2. That he hereby pleads guilty to the offense of (name of offense) in violation of (statute or ordinance);

3. That he is pleading guilty because he committed the following acts: (state sufficient facts to establish a factual basis for the plea);

4. That he understands that the maximum possible sentence for the offense he is pleading guilty to is a fine of _____ or 90 days in jail or both;

5. That he has fully discussed the charge(s), his constitutional rights, and this petition with his attorney, (name of attorney);

[OR]

5a. That he understands that he has the right to be represented by an attorney which will be appointed without cost to him if he cannot afford to pay for an attorney and that he hereby waives that right;

6. That he understands he has the following constitutional rights which he hereby knowingly and intelligently waives;

a. the right to a trial to the court or to a jury of six (6) members in which he is presumed innocent until proven guilty beyond a reasonable doubt;

b. the right to confront and cross-examine all witnesses against him;

c. the right to remain silent or to testify for himself.

7. That he is entering his plea freely and voluntarily and without any promises except as indicated in number 8 below.

8. That he is entering his plea of guilty based on the following plea agreement with the prosecutor: (if none so state);

9. That he understands that if the court does not approve this agreement he has the absolute right to withdraw his plea of guilty and have a trial.

Dated this _____ day of _____, 19__

_____
Defendant

(where petition is to be filed in lieu of a personal appearance by defendant, add the following declaration:)

_____ states that he is the attorney for the defendant in the above entitled criminal action; that he personally explained the contents of the above petition to the defendant; that to the best of his knowledge the defendant's constitutional rights have not been violated and no meritorious defense exists to the charge(s) to which defendant is pleading guilty; that he personally observed the

defendant date and sign the above petition; and that he concurs in the entry of defendant's plea of guilty.

Dated this _____ day of _____, 19__

_____

Attorney for Defendant.

Rule 16. District Court Misdemeanor Jurisdiction

The district court shall try any misdemeanor offense prosecuted by indictment or which is joined with a felony or a gross misdemeanor prosecution pursuant to Minn. Stat., sec. 609.035. Any such prosecutions shall be governed by these rules. In misdemeanor cases prosecuted by indictment, to the extent that Rule 19 conflicts with other rules, Rule 19 shall govern.

(Amended March 31, 1977, effective July 1, 1977.)

Rule 17. Indictment, Complaint and Tab Charge

17.01 Prosecution by Indictment, Complaint or Tab Charge

An offense which may be punished by life imprisonment shall be prosecuted by indictment, but the prosecution may proceed by a complaint following an arrest without a warrant or as the basis for the issuance of a warrant of arrest. The procedure thereafter shall be in accordance with the provisions of Rules 8 and 19. Any other offense defined by state law may be prosecuted by indictment or by a complaint as provided by Rule 2. Misdemeanors may also be prosecuted by tab charge.

The arrest of a person under a warrant of arrest issued upon a complaint under Rule 3 or the filing of a complaint under Rule 4.02, subd. 5(2) against a person arrested without a warrant shall not preclude an indictment for the offense charged in the complaint or for an offense arising from the conduct upon which the charge in the complaint was based.

17.02 Nature and Contents

Subd. 1. Complaint. A complaint shall be substantially in the form prescribed by Rule 2.

Subd. 2. Indictment. An indictment shall contain a written statement of the essential facts constituting the offense charged. It shall be signed by the foreman of the grand jury.

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

Subd. 4. Bill of Particulars. The bill of particulars is abolished.

Subd. 5. Indictment and Complaint Forms - Felony and Gross Misdemeanors. For all indictments and complaints charging a felony or gross misdemeanor offense the prosecuting attorney or such judge or judicial officer authorized by law to issue process pursuant to Rule 2.02 shall use an appropriate form authorized and supplied

by the State Court Administrator. If for any reason such form is unavailable, failure to comply with this rule shall constitute harmless error under Rule 31.01.

(Amended April 14, 1980, effective July 1, 1980.)

17.03 Joinder of Offenses and of Defendants

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

Subd. 2. Joinder of Defendants.

(1) Felony and Gross Misdemeanor Cases. When two or more defendants shall be jointly charged with a felony, they shall be tried separately provided, however, upon written motion, the court in the interests of justice and not solely related to economy of time or expense may order a joint trial for any two or more said defendants. In cases other than felonies, defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases any one or more of said defendants may be convicted or acquitted.

(2) Misdemeanor Cases. Defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases, any one or more of said defendants may be convicted or acquitted.

Subd. 3. Severance of Offenses or Defendants. Misjoinder of offenses or charges or defendants shall not be grounds for dismissal, but on motion, offenses or defendants improperly joined shall be severed for trial.

Subd. 4. Consolidation of Indictments, Complaints or Tab Charges for Trial. The court on motion of the prosecution or on its own motion may order two or more indictments, complaints, tab charges or any combination thereof to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single indictment, complaint or tab charge. On motion of the defendant, the court may order two or more indictments, complaints, tab charges, or any combination thereof to be tried together even if the offenses and the defendants, if there be more than one, could not have been joined in a single indictment, complaint or tab charge. The procedure shall be the same as if the prosecution were under such single indictment, complaint or tab charge.

Subd. 5. Dual Representation. When two or more defendants are jointly charged or will be tried jointly under subdivisions 2 or 4 of this rule, and two or more of them are represented by the same counsel, the procedure hereafter outlined shall be followed before plea and trial.

(1) The court shall address each defendant personally on the record, advise the defendant of the potential danger of dual representation, and give the defendant an opportunity to question the court on the nature and consequences of dual representation.

(2) The court shall elicit from each defendant in a narrative statement that the defendant has been advised of his right to effective representation; that the defendant understands the details of his counsel's possible conflict of interest and the potential perils of such a conflict; that the defendant has discussed the matter with his counsel, or if he wishes with outside counsel and that he voluntarily waives his Sixth Amendment protections.

17.04 Surplusage

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

17.05 Amendment of Indictment or Complaint

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

17.06 Motions Attacking Indictment, Complaint or Tab Charge

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

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

(1) Indictment.

(a) The evidence admissible before the grand jury was not sufficient as required by these rules to establish the offense charged or any lesser or other included offense or any offense of a lesser degree;

(b) The grand jury was illegally constituted;

(c) The grand jury proceeding was conducted before fewer than 16 grand jurors;

(d) Fewer than 12 grand jurors concurred in the finding of the indictment;

(e) The indictment was not found or returned as required by law;

(f) An unauthorized person was in the grand jury room during the presentation of evidence upon the charge contained in the indictment or during the deliberations or voting of the grand jury upon the charge.

(2) Indictment, Complaint or Tab Charge. In the case of an indictment, complaint or tab charge:

(a) The indictment, complaint or tab charge does not substantially comply with the requirements prescribed by law to the prejudice of the substantial rights of the defendant;

(b) The court lacks jurisdiction of the offense charged;

(c) The law defining the offense charged is unconstitutional or otherwise invalid;

(d) In the case of an indictment or complaint, that the facts stated do not constitute an offense;

(e) The prosecution is barred by the statute of limitations;

(f) The defendant has been denied a speedy trial;

(g) There exists some other jurisdictional or legal impediment to prosecution or conviction of the defendant for the offense charged, except as provided by Rule 10.02;

(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minn. Stat., sec. 609.035.

Subd. 3. Time for Motion. A motion to dismiss the indictment, complaint or tab charge shall be made within the time prescribed by Rule 10.04, subd. 1 except that an objection to the jurisdiction of the court over the offense or that the indictment, complaint or tab charge fails to charge an offense may be made at any time during the pendency of the proceeding.

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

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

(2) Grounds for Dismissal. When a motion to dismiss an indictment, complaint or tab charge is granted for a defect in the institution of prosecution or in

the indictment, complaint or tab charge, the court shall specify the grounds upon which the motion is granted.

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

In misdemeanor cases, if the defendant is unable to post any bail that might be required under Rule 6.02, subd. 1, then he must be released subject to such non-monetary conditions as the court deems appropriate under that rule. The specified time for such amended or new indictment or complaint shall not exceed sixty (60) days for filing a new indictment or seven (7) days for amending an indictment or complaint or for filing a new complaint. During the seven-day period for making the motion and during the time specified by the order, if such motion is made, dismissal of the indictment or complaint shall be stayed. If the prosecution does not make the motion within the seven-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified by the order, the defendant shall be discharged and further prosecution for the same offense shall be barred unless the prosecution has appealed as provided by law, or unless the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor cases dismissed for failure to file a timely complaint within the thirty (30) day time limit pursuant to Rule 4.02, subd. 5(3), further prosecution shall not be barred unless additionally a judge or judicial officer of the county court has so ordered.

(Amended March 31, 1977, effective July 1, 1977.)

Rule 18. Grand Jury

18.01 Summoning Grand Juries

Subd. 1. When Summoned. The district court, without regard to the beginning or ending of a term of court, shall order that one or more grand juries be drawn at least annually. The grand jury shall be summoned and convened whenever required by the public interest or whenever requested by the county attorney. Upon being drawn, each juror shall be notified of his selection. The court shall prescribe by order or rule the time and manner of summoning grand jurors. Vacancies in the grand jury panel shall be filled in the same manner as provided by this rule.

Subd. 2. How Selected and Drawn. Except as otherwise provided by this rule with respect to St. Louis County, the grand jury list shall be composed of the names of persons selected at random from a fair cross-section of the residents of the county who are qualified by law to serve as jurors and shall otherwise be selected as provided by law. The grand jury shall be drawn from the grand jury list as prescribed by law.

In St. Louis County a grand jury list shall be selected at random from a fair cross-section of the residents of each of the 3 districts of the St. Louis County Court district as defined by Minn. Stat., sec. 487.01, subd. 5(1) who are qualified by law to serve as jurors. The grand jury list shall otherwise be selected and the grand jurors shall be drawn from the list as provided by law. Each grand jury so drawn shall serve only in that district of the St. Louis County Court district from which the members of the jury are drawn.

18.02 Objections to Grand Jury and Grand Jurors

Subd. 1. Challenges Abolished. Challenges to the grand jury panel and to individual grand jurors are abolished. Objections to the grand jury panel and to individual grand jurors shall be made by motion to dismiss the indictment as hereafter provided.

Subd. 2. Motion to Dismiss Indictment. A motion to dismiss an indictment may be based upon any of the following grounds: that the grand jury was not selected, drawn or summoned in accordance with law; or that an individual juror is not legally qualified or that his state of mind prevented him from acting impartially. An indictment shall not be dismissed on the ground that one or more of the grand jurors was not legally qualified if it appears from the jury's records that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

18.03 Organization of Grand Jury

Subd. 1. Members; Quorum. A grand jury shall consist of not more than 23, nor less than 16, persons, and shall not proceed to any business unless at least 16 members are present.

Subd. 2. Organization and Proceedings. The grand jury shall be organized and its proceedings shall be conducted as provided by law except as otherwise provided by these rules.

Subd. 3. Charge. After the grand jury is sworn, the court shall instruct it respecting its duties.

18.04 Who May Be Present

Attorneys for the State, the witness under examination, interpreters when needed, and for the purpose of recording the evidence, a reporter or operator of a recording instrument may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. 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 his immunity from self-incrimination, his attorney may be present while the witness is testifying, provided the attorney is then and there available for that purpose or his 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 he is testifying.

18.05 Record of Proceedings

Subd. 1. Verbatim Record. A verbatim record shall be made by a reporter or recording instrument of the evidence taken before the grand jury and of all statements made and events occurring while a witness is before the grand jury. The record shall not be disclosed except to the court or prosecuting attorney or unless the court, upon motion by the defendant for good cause shown, or upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions thereof to the defendant or his attorneys.

Subd. 2. Transcript. Upon motion of the defendant with notice to the prosecuting attorney, the district court at any time before trial or a county or municipal court at the Omnibus Hearing provided by Rule 11 shall, subject to such protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of:

(1) any recorded testimony of the defendant before the grand jury in the case against the defendant;

(2) the recorded testimony of any persons before the grand jury whom the prosecution intends to call as witnesses at the defendant's trial; or

(3) the recorded testimony of any witness before the grand jury in the case against the defendant, provided that at the hearing on the motion, defense counsel makes an offer of proof showing that he expects to call the witness at the trial and that he will give relevant testimony favorable to the defendant.

18.06 Kind and Character of Evidence

Subd. 1. Admissibility of Evidence. An indictment shall be based on evidence that would be admissible at trial, with the following exceptions:

(1) Hearsay evidence offered only to lay the foundation for the admissibility of otherwise admissible evidence shall be admissible provided admissible foundation evidence is available and will be offered at the trial.

(2) A report or a copy of a report made by a person who is a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by him in connection with the investigation of the case against the defendant may, when certified by such person as a report made by him or as a true copy thereof, be received as evidence of the facts stated therein.

(3) Unauthenticated copies of official records shall be admissible provided the copies were made from the original records and properly authenticated copies will be available at the trial.

(4) Written sworn statements of the persons who claim to have title or an interest in property shall be admitted to prove ownership or that the property was obtained without the owner's consent, and written sworn statements of such persons or of experts shall be admitted to prove the value of the property, provided that admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.

(5) Written sworn statements of witnesses who for reasons of ill health or for other valid reasons are unable to testify in person shall be admitted, provided that such witnesses or otherwise admissible evidence will be available at the trial to prove the facts stated in the statements.

(6) Oral or written summaries made by investigating officers or other persons, who are called as witnesses, of the contents of books, records, papers and other documents which they have examined but which are not produced at the hearing or previously submitted to defense counsel for examination, provided the documents and summaries would otherwise be admissible. It shall be permissible for a police officer in charge of the investigation to give an oral summary.

Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an indictment when upon all of the evidence there is probable cause to believe that an offense has been committed and that the defendant committed it. Reception of inadmissible evidence shall not be grounds for dismissal of an indictment if there is sufficient admissible evidence to support the indictment.

Subd. 3. Presentments Abolished. The grand jury may not find or return a presentment.

(Amended March 31, 1977, effective July 1, 1977.)

18.07 Finding and Return of Indictment

An indictment may be found only upon the concurrence of 12 or more jurors. When so found, it shall be signed by the foreman, whether he be one of the 12 concurring or not, and delivered to a judge in open court. If 12 jurors shall not concur in finding an indictment, the foreman shall so report in writing to the court forthwith, and any charges filed against the defendant for the offenses considered

and upon which no indictment was returned shall be dismissed. The failure to find an indictment or the dismissal of the charge shall not prevent the case from again being submitted to a grand jury as often as the court shall direct.

18.08 Secrecy of Proceedings

Every grand juror shall keep secret whatever he or any other juror has said during its deliberations and how he or any other juror has voted. Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the prosecuting attorney for use in the performance of his duties, and to the defendant or his attorneys pursuant to Rule 18.05 of this rule governing the record of the grand jury proceedings. Otherwise, no juror, attorney, interpreter, stenographer, reporter, operator of a recording device, typist who transcribes recorded testimony, clerk of court, law enforcement officer, or court attache may disclose matters occurring before the grand jury except when directed by the court preliminarily to or in connection with a judicial proceeding. Unless the court directs otherwise, no person shall disclose the finding of an indictment until the defendant is in custody or appears before the court except when necessary for the issuance and execution of a summons or warrant, provided, however, disclosure may be made by the prosecuting attorney by notice to the defendant or his attorney of the indictment and the time of defendant's appearance in the district court, if in the discretion of the prosecuting attorney such notice is sufficient to insure defendant's appearance.

18.09 Tenure and Excuse

A grand jury shall be drawn to serve for a specified period of time, not to exceed 12 months, designated by order of court. It shall not be discharged and its powers shall continue:

(a) until the specified period of its service is completed; or

(b) until its successor is drawn; or

(c) until it has completed an investigation, already begun, of a particular offense, whichever is the later.

The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court.

At any time for cause shown the court may excuse a juror either temporarily or permanently, and in either event the court may impanel another person in place of the juror excused.

Rule 19. Warrant or Summons Upon Indictment; Appearance Before District Court

19.01 Issuance

When an indictment is filed, a warrant for the arrest of each defendant named in the indictment shall be issued by the court upon the request of the prosecuting attorney, except that a summons instead of a warrant shall be issued upon the request of the prosecuting attorney or by direction of the court or if the defendant is a corporation.

If the defendant is in custody, the court may order the officer having the defendant in custody to bring him before the court at a specified time and date.

More than one warrant or summons may be issued for the same defendant. If a defendant other than a corporation for whom a summons has been issued fails to appear in response to a summons, a warrant shall be issued.

19.02 Form

Subd. 1. Warrant. The warrant shall be signed by the judge; shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty; shall describe the offense

charged in the indictment; and shall command that the defendant be arrested and brought before the court. The amount of bail and other conditions of release may be set by the court and endorsed on the warrant.

Subd. 2. Summons. The summons shall be signed by the judge and shall summon the defendant to appear before the court at a specified time and place to answer to the indictment. A copy of the indictment shall be attached to the summons.

19.03 Execution or Service; Certification of Execution or Service

Subd. 1. By Whom. The warrant may be executed by any officer authorized by law. The summons may be served by any officer authorized to execute a warrant, and if served by mail, it may be served by the clerk.

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

Subd. 3. Manner. The warrant shall be executed or summons served in the manner provided by Rule 3.03, subd. 3.

Subd. 4. Certification. The execution of a warrant or the service of a summons shall be certified as provided by Rule 3.03, subd. 4.

Subd. 5. Unexecuted Warrants. At the request of the prosecuting attorney made at any time while the indictment is pending, a warrant returned unexecuted or a summons returned unserved or a duplicate thereof may be delivered to any authorized officer or person for execution or service.

19.04 Appearance of Defendant Before Court

Subd. 1. Appearance. The defendant shall be taken promptly before the district court which issued the warrant.

Subd. 2. Statement to Defendant. When the defendant initially appears before the district court under a warrant of arrest or in response to a summons, he shall be advised of the charges against him. If he has not received a copy of the indictment, he shall be provided with a copy.

The court shall also advise the defendant substantially as required by Rule 5.01.

Subd. 3. Appointment of Counsel. If the defendant is not represented by counsel and is financially unable to afford counsel, the court shall appoint counsel for him.

Subd. 4. Date for Arraignment. Upon defendant's initial appearance before the district court, he may be arraigned, upon his request and with the consent of the court. If the defendant is not arraigned at the initial appearance, a date shall be set for his arraignment upon the indictment not more than seven (7) days from the date of such initial appearance. The time for appearance may be extended by the district court for good cause. Upon defendant's arraignment, whether at his initial appearance or at some later appearance prior to the Omnibus Hearing, he may only enter a plea of guilty. If he does not wish to plead guilty, he shall not be called upon to enter any other plea and the arraignment shall be continued until the Omnibus Hearing when pursuant to Rule 11.10 he shall plead to the complaint or the complaint as amended or be given additional time within which to plead.

Subd. 5. Omnibus Hearing Date and Procedure. If upon arraignment, the defendant does not plead guilty, a date shall be fixed, not more than seven (7) days from the date of the arraignment, unless the court for good cause shown extends the time, when an Omnibus Hearing shall be held in accordance with Rule 11.

Subd. 6. Notice by Prosecuting Attorney.

(1) Notice of Evidence and Identification Procedures. When the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping, (2) any confessions, admissions or statements in the nature of confessions made

by the defendant, (3) any evidence against the defendant discovered as the result of confessions, admissions or statements in the nature of confessions made by the defendant, or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney, on or before the date set for defendant's arraignment, shall notify the defendant or his counsel in writing of such evidence and identification procedures.

(2) Notice of Additional Offenses. The prosecuting attorneys shall notify the defendant or his counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. The notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offense becomes known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which the defendant has been previously prosecuted, or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged in the indictment arose.

Subd. 7. Discovery. Before the date set for the Omnibus Hearing the prosecution and defendant shall complete the discovery that is required by Rules 9.01, subd. 1 and 9.02, subd. 1 to be made without the necessity of an order of court.

19.05 Bail or Conditions of Release

Upon the defendant's initial appearance before the district court following an indictment, the court may, in accordance with Rule 6 set bail or other conditions of release or may continue or modify bail or conditions of release previously ordered.

19.06 Record

A verbatim record shall be made of the proceedings before the court upon defendant's initial appearance and arraignment and of the Omnibus Hearing.

Rule 20. Proceedings for Mentally Ill or Mentally Deficient

20.01 Competency to Proceed

Subd. 1. Competency to Proceed Defined. No person shall be tried or sentenced for any offense while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or participating in his defense.

Subd. 2. Proceedings. If during the pending proceedings, the court in which a criminal case is pending determines upon motion of the prosecuting attorney, defense counsel, or on its own motion that there is reason to doubt the defendant's competency as defined by this rule, the court shall suspend the criminal proceedings and shall proceed as follows:

(1) Court. If the case is pending before a municipal or county court and the charge is a felony or gross misdemeanor, the case shall be transferred to the district court of the county where the offense occurred for further proceedings in conformity with this rule. If the charge is a misdemeanor, the court having trial jurisdiction shall either proceed according to this rule, or cause civil commitment proceedings to be instituted against the defendant, or unless contrary to the public interest, dismiss the case.

(2) Probable Cause - Felony or Gross Misdemeanor. In the case of a felony or gross misdemeanor, unless the issue of probable cause has previously been determined, the district court, upon motion, before proceeding further shall determine whether there is sufficient probable cause stated on the face of the complaint. If the court determines that the complaint does not state sufficient probable cause to believe the defendant committed the offense charged, the charges against the defendant shall be dismissed.

(3) Medical Examination. The court shall appoint at least one qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness to examine the defendant and to report to the court on his mental condition. The court may order the defendant confined in a state mental hospital or other suitable hospital or facility for the purpose of such examination for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted to observe the examination and to conduct his own examination of the defendant.

(4) Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and he shall cause copies of the report to be delivered forthwith to the prosecuting attorney and to defense counsel. The contents of the report shall not be otherwise disclosed until the hearing on the defendant's competency. The report of the examination shall contain:

(1) A diagnosis of the mental condition of the defendant.

(2) If the defendant is mentally ill or mentally deficient, an opinion as to:

(a) his capacity to understand the proceedings against him and to participate in his defense;

(b) the extent of his homicidal tendencies, if any, and the degree of likelihood that he will engage in seriously harmful conduct;

(c) the extent to which he can be treated without being committed to an institution; and

(d) whether there is a substantial probability that with treatment or otherwise he will ever attain the competency to proceed, and if so, in approximately what period of time.

(3) A statement of the factual basis upon which the diagnosis and opinion are based.

(4) If the examination could not be conducted by reason of the defendant's unwillingness to participate therein, a statement to that effect with an opinion, if possible, as to whether the defendant's unwillingness was the result of mental illness or deficiency.

Subd. 3. Determination of Competency. If either party files written objections to the report within ten (10) days after the receipt of a copy thereof, the court, upon notice to the parties, shall hold a hearing on the issue of the defendant's competency to proceed. At the hearing, evidence as to the defendant's mental condition may be admitted, including the report of the person who examined the defendant at the direction of the court. If neither the prosecution nor the defense files written objections to the report within the ten-day period, the court without a hearing may determine the defendant's competency to proceed upon the basis of the report.

Subd. 4. Effect of Finding on Issue of Competency to Proceed.

(1) Finding of Competency. If the court determines that the defendant is competent to proceed, the criminal proceedings against him shall be resumed.

(2) Finding of Incompetency. If the charge against the defendant is a misdemeanor and the court determines that he is incompetent to proceed, the charge shall be dismissed. If the charge against the defendant is a gross misdemeanor or felony and the court determines that the defendant is incompetent to proceed, the criminal proceedings against him shall be further suspended except as provided by Rule 20.01, subd. 6.

(a) Finding of Mental Illness. If the court determines that the defendant is mentally ill so as to be incapable of understanding the proceedings against him or participating in his defense, and the defendant is under civil commitment as mentally ill, the court shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule 20.01, subd. 5.

(b) Finding of Mental Deficiency. If the court finds the defendant to be mentally deficient so as to be incapable of understanding the proceedings against him or participating in his defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court shall order him remanded to the care and custody of the commissioner, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment shall be subject to the supervision of the trial court as provided by Rule 20.01, subd. 5.

(c) Appeal. Either party shall have the right of appeal to the Court of Appeals from a determination of the county or probate court upon the civil commitment proceedings. The appeal shall be on the record only pursuant to Rule 28. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

Subd. 5. Continuing Supervision by the Court in Felony and Gross Misdemeanor Cases. The head of the institution to which the defendant is committed under civil commitment proceedings, or if the defendant is not committed to an institution, the officer or other person charged with his supervision or to whom he has been committed, shall report periodically to the trial court, at such times as the court shall provide, on the defendant's mental condition with an opinion as to his competency to proceed. The reports shall be made not less than once every six months unless otherwise ordered. Copies of the reports shall be furnished to the prosecuting attorney and to defense counsel.

When the court on application of the prosecuting attorney, defense counsel, the defendant, or the person having supervision over the defendant, or on the court's own motion, determines, after a hearing with notice to the parties, that the defendant is competent to proceed, the criminal proceedings against the defendant shall be resumed. Unless the criminal charges against the defendant have been dismissed as provided by Rule 20.01, subd. 6, the trial court and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the defendant's civil commitment or status.

Subd. 6. Dismissal of Criminal Proceedings. Except when the defendant is charged with murder, the criminal proceedings against him shall be dismissed upon the expiration of three years from the date of the finding of his incompetency to proceed unless the prosecuting attorney, before the expiration of the three-year period, files a written notice of his intention to prosecute the defendant when he has been restored to competency.

Subd. 7. Determination of Legal Issues Not Requiring Defendant's Participation. The fact that the defendant is incompetent to proceed shall not preclude his counsel from making any legal objection or defense which is susceptible of fair determination before trial without the personal participation of the defendant.

Subd. 8. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by him for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence at the proceedings to determine whether he is competent to proceed.

Subd. 9. Credit for Time Spent in Confinement. If the court orders criminal proceedings resumed on a finding that defendant is competent to proceed, and the defendant is convicted of the charge, the time he has spent confined to a hospital or other facility under this rule shall be credited upon any jail or prison sentence imposed upon him.

(Amended March 31, 1977, effective July 1, 1977.)

20.02 Medical Examination of Defendant Upon Defense of Mental Deficiency or Mental Illness

Subd. 1. Authority of Court to Order Examination. The court having trial jurisdiction over the offense charged may order a mental examination of the defendant when the defense has notified the prosecuting attorney pursuant to Rule 9.02, subd. 1(3)(a) of an intention to assert a defense of mental illness or deficiency, when the defendant in a misdemeanor case pleads not guilty by reason of mental illness or mental deficiency, or when at the trial of the case, the defendant offers evidence of such mental condition.

Subd. 2. Examination of the Defendant. If the court orders a mental examination of the defendant, it shall appoint at least one qualified psychiatrist, or clinical psychologist, or physician experienced in the field of mental illness to examine the defendant and report upon his mental condition. For the purpose of the examination, the court, upon a special showing of need therefor, may order the defendant to be confined to a hospital or other suitable facility for a specified period not to exceed 60 days. If the defendant or prosecution has retained a qualified psychiatrist or clinical psychologist or physician experienced in the field of mental illness, the court on request of the defendant or prosecuting attorney shall direct that such psychiatrist or psychologist or physician be permitted to observe the mental examination and to conduct his own mental examination of the defendant.

Subd. 3. Refusal of Defendant to be Examined. If the defendant does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may prohibit the defendant from introducing evidence of his mental condition, may strike any such evidence previously introduced, may permit any other party to introduce evidence of defendant's refusal to cooperate and to comment thereon to the trier of the facts, and may make any such other ruling as it deems just.

Subd. 4. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, and he shall cause copies of the report to be delivered forthwith to the prosecuting attorney, and to defense counsel. The contents of the report shall not otherwise be disclosed except as hereafter provided by this rule. The report of the examination shall contain:

(1) A diagnosis of the defendant's mental condition as requested by the court;

(2) If so directed by the court an opinion as to whether, because of mental illness or deficiency, the defendant at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which defendant is charged or that it was wrong;

(3) Any opinion requested by the court that is based on the examiner's diagnosis;

(4) A statement of the factual basis upon which the diagnosis and any opinion are based.

If the examination cannot be conducted by reason of the defendant's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental illness or deficiency.

Subd. 5. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the defendant unless the defendant has previously made his mental condition an issue in the case. If his mental condition is an issue, any party may call the person who examined the defendant at the direction of the court to testify as a witness at the trial and he shall be subject to cross-examination by any other party. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01 or Rule 20.02, or both, the admissibility at trial of any statements made by him for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(1) Notice by Defendant of Sole Defense of Mental Condition. If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely solely on the defense of mental illness or deficiency or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or mental deficiency pursuant to Rule 14.01(c), statements made by the defendant for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(2) Separate Trial of Defenses. If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely on the defense of mental illness or mental deficiency together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or mental deficiency, there shall be a separation of the two defenses with a sequential order of proof before the court or jury in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the defendant's mental illness or deficiency.

(3) Effect of Separate Trial. If the defendant relies on the two defenses, the statements made by him for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against him only at that stage of the trial relating to the defense of mental illness or mental deficiency.

(4) Procedure Upon Separated Trial of Defenses.

(a) Instructions to Jury. When the two defenses are separated for trial under this rule, the jury shall be informed at the commencement of the trial that the two defenses have been interposed; that the defense of not guilty will be tried first and then the defense of mental illness or mental deficiency; that if the jury finds that the elements of the offense charged have not been proved, the defendant will be acquitted; that if the jury finds the elements of the offense have been proved, the defense of mental illness or deficiency will then be tried and determined by the jury.

(b) Proof of Elements of Offense - Effect. Upon the trial of the defense of not guilty the jury, or the court, if a jury is waived, shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt.

If the court or jury determines that the elements of the offense have not been proved beyond a reasonable doubt, a judgment of acquittal shall be entered.

If the court or jury determines that the elements of the offense have been proved beyond a reasonable doubt, the defense of mental illness or mental deficiency shall then be tried and determined by the jury, or by the court, if a jury is waived, and based upon that determination the jury or court shall render a verdict or make a finding:

(1) of not guilty by reason of mental illness; or

(2) of not guilty by reason of mental deficiency; or

(3) of guilty.

The court shall enter judgment accordingly. The defendant shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence.

Subd. 7. Simultaneous Examinations. The court may order that the examination for competency to proceed under Rule 20.01 and the examination authorized by Rule 20.02 be conducted simultaneously.

Subd. 8. Legal Effect of Finding of Not Guilty by Reason of Mental Illness or Deficiency.

(1) Mental Illness. When a defendant is found not guilty by reason of mental illness, and the defendant is under civil commitment as mentally ill, the court shall order that the commitment be continued, and if not under commitment, the court shall cause civil commitment proceedings to be instituted against him and that the defendant be detained in a state hospital or other facility pending completion of the proceedings. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by Rule 20.02, subd. 8(4).

(2) Mental Deficiency. When a defendant is found not guilty by reason of mental deficiency and the defendant is under commitment to the guardianship of the commissioner of public welfare, the court shall order him remanded to the care and custody of the commissioner, and if not under such commitment, the court shall cause civil commitment proceedings to be instituted against him. The commitment or continuing commitment in felony and gross misdemeanor cases shall be subject to the supervision of the trial court as provided by Rule 20.02, subd. 8(4).

(3) Appeal. Either party shall have the right to appeal to the Court of Appeals from a determination of the county or probate court upon the civil commitment proceedings. The appeal shall be taken on the record only pursuant to Rule 28. In all commitment proceedings instituted under this rule, a verbatim record of the proceedings shall be made.

(4) Continuing Supervision. In felony and gross misdemeanor cases only, the trial court and the prosecuting attorney shall be notified of any proposed institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the defendant's civil commitment or status.

(Amended March 31, 1977, effective July 1, 1977.)

20.03 Disclosure of Reports and Records of Defendant's Mental Examinations

Subd. 1. Order for Disclosure. If a defendant notifies the prosecuting attorney under Rule 9.02, subd. 1(3)(a) of his intention to rely on the defense of mental illness or mental deficiency, the trial court, on motion of the prosecuting attorney and notice to defense counsel may order the defendant to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental condition of the defendant and relevant to the issue of the defense of his mental illness or mental deficiency. If the copies of the reports and records are furnished to the court, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the defendant.

If the defendant is unable to comply with the court order, a subpoena duces tecum may be issued under Rule 22.

Subd. 2. Use of Reports and Records. If an order for disclosure of reports and records under Rule 20.03, subd. 1 is entered and copies thereof are furnished to the prosecuting attorney, the reports and records and any evidence obtained therefrom may be admitted in evidence only upon the issue of the defense of mental

illness or mental deficiency when that issue is the sole defense or when it is tried as provided by Rule 20.02, subd. 6(5).

Rule 21. Depositions

21.01 When Taken

Whenever there is a reasonable probability that the testimony of a prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1, the court before whom the proceedings are pending may, at any time after the filing of a complaint or indictment, upon motion and notice to the parties, order that the testimony of such witness be taken by oral deposition before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place. The order shall also direct the defendant to be present at the taking of the deposition.

21.02 Notice of Taking

The party or person at whose instance a deposition is to be taken shall give to every other party reasonable notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. Unless otherwise ordered by the court the notice to the defendant shall be served personally on all the defendants. The notice shall inform them that they are required by order of court to personally attend the taking of the deposition, and a copy of the court order shall be attached to the notice. An officer having custody of any of the defendants shall be notified of the time and place set for the deposition and shall produce them at the examination and keep them in the presence of the witness during the examination.

On motion of a party upon whom notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

21.03 Expenses of Defendant and Counsel; Failure to Appear

Subd. 1. Expenses, Defendant and Counsel. If a defendant is unable to bear the expenses of travel and subsistence of himself and his attorney for attendance at the examination, the court shall direct that such expenses be paid at public expense.

Subd. 2. Failure to Appear. If a defendant who is not confined fails to appear at the examination without reasonable excuse after having received notice thereof, the deposition may be taken and used to the same extent as though he had been present.

21.04 How Taken

Subd. 1. Oral Deposition. Depositions shall be taken upon oral examination.

Subd. 2. Oath and Record of Examination. The witness shall be put on oath and a verbatim record of his testimony shall be made.

The testimony shall be taken stenographically and transcribed unless the court orders otherwise.

In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

Subd. 3. Scope and Manner of Examination - Objections - Motion to Terminate.

(a) In no event shall the deposition of a party defendant be taken without his consent.

(b) The scope and manner of examination and cross-examination shall be the same as that allowed at trial. Each party having possession of a statement of the witness being deposed shall make the statement available to the other party for examination and use at the taking of a deposition if such other party would be entitled to the statement at the trial.

(c) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections.

(d) At any time during the taking of the deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith, or in such manner as to annoy, embarrass, or oppress the deponent or party or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of taking the deposition by ordering as follows:

(1) that certain matters not be inquired into, or that the scope of the examination be limited to certain matters;

(2) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

21.05 Transcription, Certification and Filing

When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the clerk thereof for filing.

Upon the request of a party, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party. If the person producing the exhibits requests their return, the person taking the deposition shall mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

21.06 Use of Deposition

Subd. 1. Unavailability of Witness. At the trial, or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if it appears:

(a) that the witness is dead or unable to be present or to testify at the trial or hearing because of then existing physical or mental illness or infirmity; or

(b) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, order of court, or other reasonable means.

Subd. 2. Inconsistent Testimony. A deposition may be used as substantive evidence, so far as otherwise admissible under the rules of evidence, if the witness gives testimony at the trial or hearing inconsistent with his deposition or if he persists at the hearing or trial in refusing to testify despite an order of the court to do so.

Subd. 3. Impeachment. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the party offering the deposition, unless part of the deposition has previously been offered by another party.

21.07 Effect of Errors and Irregularities in Depositions

Subd. 1. As to Notice. All errors and irregularities in the order or notice for taking a deposition are waived unless written objection is served promptly upon the party giving the notice.

Subd. 2. As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the grounds for disqualification become known or could be discovered with reasonable diligence.

Subd. 3. As to Taking of Deposition. Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one which might have been obviated or removed if presented at that time.

Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

Subd. 4. As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, recorded, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the person taking the deposition under these rules are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

21.08 Deposition by Stipulation

The parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. These rules to the extent not inconsistent with the stipulation shall otherwise govern the taking of the deposition.

Rule 22. Subpoena

22.01 For Attendance of Witnesses; Form; Issuance

Subd. 1. When Issued. A subpoena may be issued in a criminal proceeding only for the attendance of a witness before a grand jury, or at a hearing or trial before the court in which the proceeding is pending, or for attendance at the taking of a deposition.

Subd. 2. By Whom Issued. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title of the proceeding if the subpoena be for a hearing or trial before the court; but if the subpoena be for a grand jury, it shall be headed "In the matter of the investigation of the grand jury of the (particular) county conducting the proceeding." The subpoena shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed but otherwise in blank to the party requesting it, who shall fill in the blanks before it is served.

Subd. 3. Unrepresented Defendant. A subpoena shall not be issued at the request of a defendant not represented by counsel without an order of court authorizing its issuance. The defendant's request to the court may be oral and the court's order may be either oral, if noted in the court's record, or written.

22.02 For Production of Documentary Evidence and of Objects

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena, including medical reports and medical and hospital records ordered to be disclosed under Rule 20.03, subd. 1, be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them to be inspected by the parties or their attorneys.

22.03 Service

A subpoena may be served by the sheriff, by his deputy, or any other person at least 18 years of age who is not a party. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein. Fees and mileage need not be tendered in advance.

22.04 Place of Service

A subpoena requiring the attendance of a witness may be served at any place within the state.

22.05 Contempt

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

22.06 Witness Outside the State

The attendance of a witness who is outside the state may be secured as provided by law.

Rule 23. Petty Misdemeanors and Violations Bureaus

23.01 Definition of Petty Misdemeanor

As used in these rules, petty misdemeanor means a misdemeanor offense punishable only by fine of not more than $100.

23.02 Designation as Petty Misdemeanor by Sentence Imposed

A conviction is deemed to be for a petty misdemeanor as defined by Rule 23.01 if the sentence imposed is within the limits provided by that rule for a petty misdemeanor.

23.03 Violations Bureaus

Subd. 1. Establishment. The County Court may establish misdemeanor violations bureaus at the places it determines.

Subd. 2. Fine Schedules.

(1) Uniform Fine Schedule. The County Court Judges of the state shall adopt and as necessary revise a uniform fine schedule setting forth fines to be paid to violations bureaus for all statutory petty misdemeanors and for such other statutory misdemeanors as the judges may select.

(2) County Fine Schedules. Upon establishment of a violations bureau, the County Court shall establish by court rule a fine for any misdemeanor which may be paid to the violations bureau in lieu of a court appearance by the defendant. When an offense is the same or substantially the same as an offense included on the uniform fine schedule, the fine established by the County Court shall be the same as the fine prescribed in the uniform fine schedule.

Subd. 3. Fine Payment. A defendant shall be advised in writing before paying a fine to a violations bureau that such a payment constitutes a plea of guilty to the misdemeanor designated and an admission that he understands that he has the rights which he voluntarily waives:

a. to a trial to the court or to a jury;
b. to be represented by counsel;
c. to be presumed innocent until proven guilty beyond a reasonable doubt;
d. to confront and cross-examine all witnesses against him; and
e. to either remain silent or to testify in his own behalf.

Subd. 4. Functions of Violations Bureau. The violations bureau shall process all citations for misdemeanors included on the county fine schedule, accept all fines payable on such citations at the bureau, set dates for arraignment on such citation charges to be heard in court, accept bail, keep proper records and accounts and perform such other duties as the court prescribes.

Subd. 5. Procedures of the Violations Bureau. The County Court shall supervise and the clerk shall operate the misdemeanor violations bureaus. The County Court shall, consistent with these rules, issue rules governing the duties and operation of the bureaus. The clerk shall assign one or more deputy clerks to discharge and perform the duties of the bureaus.

(Amended March 31, 1977, effective July 1, 1977.)

23.04 Designation as a Petty Misdemeanor in a Particular Case

If at or before the time of arraignment or trial on an alleged misdemeanor violation, the prosecuting attorney certifies to the court that in his opinion it is in the interests of justice that the defendant not be incarcerated if convicted, the alleged offense shall be treated as a petty misdemeanor if the defendant consents and the court approves.

23.05 Procedure in Petty Misdemeanor Cases

Subd. 1. No Right to Jury Trial. There shall be no right to a jury trial upon a misdemeanor charge which by operation of Rule 23.04 is to be treated as a petty misdemeanor.

Subd. 2. Right to Appointed Counsel. If a defendant is financially unable to afford counsel, the Court shall, unless waived, appoint counsel to represent him if he is charged with a misdemeanor which by operation of Rule 23.04 is to be treated as a petty misdemeanor and which also involves moral turpitude.

Subd. 3. General Procedure. A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt and except as otherwise provided in Rule 23 the procedure in petty misdemeanor cases shall be the same as for misdemeanors punishable by incarceration.

(Amended March 31, 1977, effective July 1, 1977.)

23.06 Effect of Conviction

A petty misdemeanor shall not be considered a crime.

Rule 24. Venue

24.01 Place of Trial

The case shall be tried in the county where the offense was committed except as otherwise provided by these rules.

24.02 Venue in Special Cases

Subd. 1. Offense Committed on Public or Private Conveyance. When any offense is committed within the state on a public or private conveyance, and it is doubtful in which county the offense occurred, the case may be prosecuted and tried in any county through which the conveyance traveled in the course of the trip

during which the offense was committed, or in the county where such trip began or terminated.

Subd. 2. Offenses Committed on County Lines. Offenses committed on or within 1,500 feet (457.2M) of the boundary line between two counties may be alleged in the complaint or indictment to have been committed in either of them and may be prosecuted and tried in either county.

Subd. 3. Injury or Death in One County from an Act Committed in Another County. If an act is committed in one county resulting in injury or death in another county, the offense may be prosecuted and tried in either county. If it is doubtful in which one of two or more counties the act was committed or injury or death occurred, the offense may be prosecuted and tried in any one of such counties.

Subd. 4. Prosecution in County Where Injury or Death Occurs. If an act is committed either within or without the limits of the state and injury or death results, the offense may be prosecuted and tried in the county of this state where the injury or death occurs, or the body of the deceased is found.

Subd. 5. Prosecution When Death Occurs Outside State. If an assault is committed in this state resulting in death outside the state, the homicide may be prosecuted and tried in the county where the assault was committed.

Subd. 6. Kidnapping. The offense of kidnapping may be prosecuted and tried either in the county where the offense was committed or in any county through or in which the person kidnapped was taken or kept while under confinement or restraint.

Subd. 7. Libel. The offense of publication of a libel contained in a newspaper published in the state may be prosecuted and tried in any county where the paper was published or circulated; but a person shall not be prosecuted for publication of the same libel against the same person in more than one county.

Subd. 8. Bringing Stolen Goods Into State. Whoever brings stolen property into the state in violation of Minn. Stat., sec. 609.525 (1971) may be prosecuted and tried in any county, but not more than one county, into or through which the property was brought.

Subd. 9. Obscene or Harassing Telephone Calls. Violations of Minn. Stat., sec. 609.79 (1971) may be prosecuted and tried either at the place where the telephone call is made or where it is received.

Subd. 10. Fair Campaign Practices. Violations of Minn. Stat., sec. 210A.34 (1975) prohibiting corporate contributions to political campaigns may be prosecuted and tried in the county where such payment or contribution is made or services rendered or in any county wherein such money has been paid or distributed.

Subd. 11. Series of Offenses Aggregated. When a series of offenses are aggregated pursuant to Minn. Stat., sec. 609.52, subd. 3(5) (1971) and the offenses have been committed in more than one county, the case may be presented and tried in any one of the counties in which one or more of the offenses was committed.

Subd. 12. Non-Support of Wife or Child. Violations of Minn. Stat., sec. 609.375 (1971) for non-support of wife or child may be prosecuted and tried in the county where the wife or child or both reside.

(Amended March 31, 1977, effective July 1, 1977.)

24.03 Change of Venue

Subd. 1. Grounds. The case may be transferred to another county:

a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;

b. For the convenience of parties and witnesses;

c. In the interests of justice;

d. As provided by Rule 25.02 governing prejudicial publicity.

Subd. 2. County to which Transferred. For the purposes of change of venue under this rule the district referred to in Minn. Const. Art. I, Sec. 6 shall be all that area within the geographical boundaries of the State of Minnesota.

Subd. 3. Time for Motion for Change of Venue. A motion for change of venue, except as permitted by Rule 25.02, shall be made at the time prescribed by Rule 10 for making pretrial motions.

Subd. 4. Proceedings on Transfer. If the case is transferred under these rules, all records in the case or certified copies thereof shall be transmitted to the court to which the case is transferred. If the defendant is in custody, the court may order that he be transported to the sheriff of the county to which the case is transferred. Unless the Supreme Court orders otherwise, the case shall be tried before the judge who ordered the change of venue. If the defendant has been released upon conditions of release under these rules those conditions shall be continued upon the further condition that the defendant shall appear as ordered by the court for trial and other proceedings in the county to which the case has been transferred.

Rule 25. Special Rules Governing Prejudicial Publicity

The following rules shall govern when any question of potentially prejudicial publicity is raised:

25.01 Pretrial Hearings - Motion to Exclude Public

All pretrial hearings shall be open to the public. However, the defendant may move that all or part of such hearing be held in chambers or otherwise closed to the public on the ground that dissemination of evidence or argument adduced at the hearing may disclose matters that may be inadmissible in evidence at the trial and likely to interfere with his right to a fair trial by an impartial jury. The motion shall not be granted unless the court determines that there is a substantial likelihood of such interference. With the consent of the defendant, the court may make such an exclusion order on its own motion or at the suggestion of the prosecution. No exclusion order shall issue without the court setting forth the reasons therefor. Any person aggrieved may petition the supreme court for immediate review of the order granting or denying exclusion. Whenever under this rule all or part of any pretrial hearing is held in chambers or otherwise closed to the public, a complete record of the proceedings shall be made and upon request shall be transcribed and filed and shall be available to the public following the completion of the trial or disposition of the case without trial. For the protection of innocent persons, the court may order that names be deleted or substitutions made therefor in the record.

25.02 Continuance or Change of Venue

A motion for continuance or change of venue because of prejudicial publicity shall be governed by the following rules:

Subd. 1. At Whose Instance. A continuance or change of venue may be granted on motion of either the prosecution or the defense or on the court's own motion.

Subd. 2. Methods of Proof. In addition to the testimony or affidavits of individuals in the community, which shall not be required as a condition of the granting of a motion for continuance or change of venue, qualified public opinion surveys shall be admissible as well as other materials having probative value.

Subd. 3. Standards for Granting the Motion. A motion for continuance or change of venue shall be granted whenever it is determined that the dissemination of potentially prejudicial material creates a reasonable likelihood that in the absence of such relief, a fair trial cannot be had. A showing of actual prejudice shall not be required.

Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion shall be determined before the jury is sworn. If a motion is made or if reconsideration of a prior denial is sought, it may be granted notwithstanding the fact that a jury has been sworn to try the case.

Subd. 5. Limitations; Waiver. It shall not be ground for denial of a change of venue that one such change has already been granted. The waiver of the right to trial by jury or the failure to exercise all available peremptory challenges shall not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.

25.03 Restrictive Orders

Except as provided in Rule 33.04 the following rules shall govern the issuance of any court order restricting public access to public records relating to a criminal proceeding:

Subd. 1. Motion and Notice.

(a) A restrictive order may be issued only upon motion and after notice and hearing.

(b) Notice of the hearing shall be given in the time and manner to such interested persons, including the news media, as the court may direct.

Subd. 2. Hearing.

(a) At the hearing, the moving party shall have the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 3.

(b) The public and news media shall have a right to be represented at the hearing and to present evidence and arguments in support of or in opposition to the motion.

(c) A verbatim record shall be made of the hearing.

Subd. 3. Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes on the basis of the evidence presented at the hearing that:

(a) Access to such public records will present a clear and present danger of substantially interfering with the fair and impartial administration of justice.

(b) All alternatives to the restrictive order are inadequate.

Subd. 4. Findings of Fact. The court shall make written findings of the facts and statement of the reasons supporting the conclusions upon which an order granting or denying the motion is based.

Subd. 5. Appellate Review.

(a) Anyone represented at the hearing or aggrieved by an order granting or denying a restrictive order may petition the Supreme Court for review, which shall be the exclusive method for obtaining review.

(b) The Supreme Court shall determine upon the hearing record whether the moving party sustained the burden of justifying the restrictive order under the conditions specified in subd. 3 of this rule, and may reverse, affirm, or modify the order issued.

(Added November 13, 1978, effective January 1, 1979.)

Rule 26. Trial

26.01 Trial by Jury or by the Court

Subd. 1. Trial by Jury.

(1) Right to Jury Trial.

(a) Offenses Punishable by Incarceration. A defendant shall be entitled to a jury trial in any prosecution for an offense punishable by incarceration. Except as otherwise provided by these rules, trials for misdemeanors shall be in the

county court. Trials for felonies and gross misdemeanors shall be in the district court.

(b) Misdemeanors Not Punishable by Incarceration. In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial shall be to the court.

(2) Waiver of Trial by Jury.

(a) Waiver Generally. The defendant, with the approval of the court may waive jury trial provided he does so personally in writing or orally upon the record in open court, after being advised by the court of his right to trial by jury and after having had an opportunity to consult with counsel.

(b) Waiver When Prejudicial Publicity. The defendant shall be permitted to waive jury trial whenever it is determined that (a) the waiver has been knowingly and voluntarily made, and (b) there is reason to believe that, as the result of the dissemination of potentially prejudicial material, the waiver is required to assure the likelihood of a fair trial.

(3) Withdrawal of Waiver of Jury Trial. Waiver of jury trial may be withdrawn by the defendant at any time before the commencement of trial.

(4) Waiver of Number of Jurors Required by Law. At any time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of a lesser number than that provided by law. The court shall not approve such a stipulation unless the defendant, after being advised by the court of his right to trial by a jury consisting of the number of jurors provided by law, personally in writing or orally on the record in open court agrees to trial by such reduced jury.

(5) Number Required for Verdict. A unanimous verdict shall be required in all cases.

(6) Waiver of Unanimous Verdict. At any time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors less than that required by law or these rules. The court shall not approve such a stipulation unless the defendant, after being advised by the court of his right to a verdict on the concurrence of the number of jurors specified by law, personally in writing or orally on the record waives his right to such a verdict.

Subd. 2. Trial Without a Jury. In a case tried without a jury, the court, within 7 days after the completion of the trial, shall make a general finding of guilty, not guilty, or if such pleas have been made, a general finding of not guilty by reason of mental illness or mental deficiency, double jeopardy, or that prosecution is barred by Minn. Stat., sec. 609.035 (1971), if appropriate. The court, within 7 days after the general finding in felony and gross misdemeanor cases, shall in addition specifically find the essential facts in writing on the record. In misdemeanor and petty misdemeanor cases, such findings shall be made within 7 days after the filing of the notice of appeal. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein. If the court omits a finding on any issue of fact essential to sustain the general finding, it shall be deemed to have made a finding consistent with the general finding.

(Amended March 31, 1977, effective July 1, 1977.)

26.02 Selection of Jury

Subd. 1. Selection and Qualifications. The jury list shall be composed of the names of persons selected at random from a fair cross-section of the residents of the county who are qualified by law to serve as jurors and shall otherwise be selected as provided by law. The jury shall be drawn from the jury list and summoned, as prescribed by law.

The same jury list and panel may be used for both the district and county court.

Subd. 2. 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. The parties shall also have access to such other information as the clerk has obtained from prospective jurors.

Subd. 3. Challenge to Panel. Either party may challenge the jury panel on the ground that there has been a material departure from the requirements of law governing the selection, drawing or summoning of the jurors. The challenge shall be in writing, specifying the facts constituting the grounds of the challenge and shall be made before a jury is sworn. If the opposing party objects to either the sufficiency of the challenge or the facts on which it is based, the court shall hear and determine the challenge.

Subd. 4. Voir Dire Examination.

(1) Purpose - By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges, and shall be open to the public. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge shall then put to the prospective juror or jurors any questions which he thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in Rule 26.03, subd. 4. Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

(2) Sequestration of Jurors.

(a) Courts' Discretion. In the discretion of the court the examination of each juror may take place outside of the presence of other chosen and prospective jurors.

(b) Prejudicial Publicity. Whenever there is a significant possibility that individual jurors will be ineligible to serve because of exposure to prejudicial material, the examination of each juror with respect to his exposure shall take place outside the presence of other chosen and prospective jurors.

(3) Order of Drawing, Examination and Challenge.

(a) Uniform Rule. Except as provided by Rule 26.02, subd. 4(3)(c) 8 with respect to cases of first degree murder, unless the court orders that the jurors shall be drawn, examined and challenged as provided either by Rule 26.02, subd. 4(3)(b) or (c), they shall be drawn, examined and challenged as follows:

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of peremptory challenges available to all the parties and the number of any alternate jurors.

2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.

3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.

4. A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause shall be made, first by the defense and then by the prosecution.

5. If any prospective juror is challenged and excused for cause another shall be drawn from the jury panel so that the number in the jury box will remain equal to the number initially called.

6. After both parties have had an opportunity to challenge for cause, each, commencing with the defendant, may exercise alternately the peremptory challenges permitted by these rules.

7. When the peremptory challenges have been exercised, the jury shall be selected from the remaining prospective jurors in the order in which they were called until the number selected equals the number of which the jury shall be composed for trial of the case plus the alternate jurors, if any.

(b) By Order of Court. The court may order that the jurors be drawn, examined and challenged as provided by Rule 26.02, subd. 4(3)(b) or (c) as follows:

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of any alternate jurors.

2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.

3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.

4. Upon completion of defendant's examination of a prospective juror, the defendant shall be permitted to exercise a challenge for cause or a peremptory challenge as permitted by these rules as to that juror. If the juror is excused, he shall be replaced by another member of the panel. The replacement juror shall be examined and challenged after all previously drawn jurors have been examined and challenged.

5. Upon completion of the examination and any challenge of each prospective juror by the defendant, the state may examine such prospective juror and may challenge the juror for cause or peremptorily. If the juror is excused, he shall be replaced by another member of the panel who shall be subject to examination and challenge in accordance with this rule.

6. This process of jury selection shall continue until the number of persons of which the jury shall be composed for trial of the case plus any alternate jurors is selected and sworn as the trial jury.

(c) By Order of Court.

1. The court shall direct that one prospective juror at a time be drawn from the jury panel for examination.

2. The prospective juror so drawn shall be sworn to answer truthfully questions asked him relative to his qualifications to serve as a juror in the case.

3. The prospective juror shall be examined by the court and then by the parties, commencing with the defendant.

4. Upon completion of defendant's examination, the defendant may challenge the juror for cause or peremptorily as permitted by these rules.

5. If the juror is excused, another prospective juror shall be drawn from the panel and shall be examined and subject to challenge in the same manner.

6. If a prospective juror is not excused after examination by the defendant, he may be examined by the state and may be challenged for cause or peremptorily by the state.

7. This process of selection shall continue until the number of persons of which the jury shall be composed for trial of the case is selected and sworn as the trial jury plus the number of any alternate jurors.

8. In cases of first degree murder, the method provided by Rule 26.02, subd. 4(3)(c) shall be preferred unless otherwise ordered by the court.

Subd. 5. Challenge for Cause.

(1) Grounds. A juror may be challenged for cause by either party upon the following grounds:

1. The existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging.

2. A felony conviction unless his civil rights have been restored.

3. The lack of any of the qualifications prescribed by law to render a person a competent juror.

4. A physical or mental defect which renders him incapable of performing the duties of a juror.

5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.

6. Standing in relation of guardian and ward, attorney and client, employer and employee, landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted.

7. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him, in a criminal prosecution.

8. Having served on the grand jury which found the indictment, or an indictment on a related offense.

9. Having served on a trial jury which has tried another person for the same or a related offense to that charged in the indictment, complaint, tab charge or a related indictment, complaint or tab charge.

10. Having been a member of a jury formerly sworn to try the same indictment, complaint, tab charge or a related indictment, complaint or tab charge.

11. Having served as a juror in any case involving the defendant.

(2) How and When Exercised. A challenge for cause may be oral and shall state the grounds on which it is based. The challenge shall be made before the juror is sworn to try the case, but the court for good cause shown may permit it to be made after he is sworn but before all the jurors constituting the jury are sworn. If a challenge for cause is made and the court sustains the challenge, the juror shall be excused.

(3) By Whom Tried. If the opposing party objects to the sufficiency of a challenge for cause or the facts on which it is based, all issues of law or fact arising upon the challenge shall be tried and determined by the court.

Subd. 6. Peremptory Challenges. If the offense charged is punishable by life imprisonment the defendant shall be entitled to 15 and the state to 9 peremptory challenges. For any other offense, the defendant shall be entitled to 5 and the state to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants' additional peremptory challenges and permit them to be exercised separately or jointly, and in that event the state's peremptory challenges shall be correspondingly increased.

Subd. 7. Order of Challenges to the Panel and to Individual Jurors. Challenges to the panel and to individual jurors shall be made in the following order:

a. To the panel.

b. To an individual juror for cause.

c. Peremptory challenge to an individual juror.

Subd. 8. Alternate Jurors. A trial judge may impanel alternate or additional jurors whenever in his discretion, he believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. Alternate jurors, in the order in which they are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall be allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform his duties after the jury has retired to consider its verdict, a mistrial shall be declared unless the parties agree pursuant to Rule 26.01, subd. 1(4) that the jury shall consist of a lesser number than that selected for the trial. (Amended November 13, 1978, effective January 1, 1979.)

26.03 Procedures During Trial

Subd. 1. Presence of Defendant.

(1) Presence Required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules.

(2) Continued Presence Not Required. The further progress of a trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to waive his right to be present whenever:

1. a defendant voluntarily and without justification absents himself after trial has commenced; or

2. a defendant after warning engages in conduct which is such as to justify his being excluded from the courtroom because it tends to interrupt the orderly procedure of the court and the due course of the trial. As an alternative to exclusion, the court may use all such methods of restraint as will ensure the orderly procedure of the court and the due course of the trial.

(3) Presence Not Required. A defendant need not be present in the following situations:

1. a corporation may appear by counsel for all purposes;

2. in the case of felonies and gross misdemeanors, on defendant's motion, the court may excuse the defendant from attendance at any proceeding except arraignment, plea, trial, and imposition of sentence; and

3. in prosecutions for misdemeanors, the court shall permit arraignment and plea in the defendant's absence if the court is satisfied that the defendant has knowingly and voluntarily waived his right to be present. The court with the written consent of the defendant, or his oral consent in open court, may permit trial, and imposition of sentence in the defendant's absence.

Subd. 2. Custody and Restraint of Defendants and Witnesses.

a. During the trial the defendant shall be seated where he can effectively consult with his counsel and can see and hear the proceedings.

b. An incarcerated defendant or witness shall not appear in court in the distinctive attire of a prisoner.

c. Defendants and witnesses shall not be subjected to physical restraint while in court unless the trial judge has found such restraint reasonably necessary to maintain order or security. If the trial judge orders such restraint, he shall state his

reasons on the record outside the presence of the jury. Whenever physical restraint of a defendant or witness occurs in the presence of jurors trying the case, the judge shall on request of the defendant instruct those jurors that such restraint is not to be considered in assessing the proof and determining guilt.

Subd. 3. Use of Courtroom. Whenever appropriate in view of the notoriety of the case or the number or conduct of news media representatives present at any judicial proceeding, the court shall ensure the preservation of decorum by instructing those representatives and others as to the permissible use of the courtroom and other facilities of the court, the assignment of seats to news media representatives on an equitable basis, and other matters that may affect the conduct of the proceeding.

Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also include such matters as burden of proof, presumption of innocence, the necessity of proof of guilt beyond a reasonable doubt, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law, including the essential elements of the offense, as the court may deem essential to the proper understanding of the evidence. Such preliminary instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose instructions of his own to be given prior to trial.

Subd. 5. Sequestration of the Jury.

(1) In the Discretion of the Court. During the period from the time the jurors are sworn until they retire for deliberation upon their verdict, the court, in its discretion, may either permit them and any alternate jurors to separate during recesses and adjournments or direct that they be continuously kept together during such period under the supervision of proper officers. With the consent of the defendant the court, in its discretion, may allow the jurors to separate over night during deliberation. The officers shall not speak to or communicate with any juror concerning any subject connected with the trial nor permit any other person to do so, and shall return the jury to the courtroom at the next designated trial session.

(2) On Motion. Either party may move for sequestration of the jury at the beginning of trial or at any time during the course of the trial. Sequestration shall be ordered if it is determined that the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the attention of the jurors. Whenever sequestration is ordered, the court in advising the jury of the decision shall not disclose which party requested sequestration.

Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. If the jury is not sequestered, the defendant may move that the public be excluded from any portion of the trial that takes place outside the presence of the jury on the ground that dissemination of evidence or argument adduced at the hearing is likely to interfere with the defendant's right to a fair trial by an impartial jury. The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference. With the consent of the defendant, the court may take such action on its own motion or at the suggestion of the prosecution. No exclusion order shall issue without the court setting forth the reasons therefor. Any person aggrieved may petition the Court of Appeals for immediate review of the order granting or denying exclusion. Whenever under this rule part of the proceedings are held in chambers or otherwise closed to the public, a complete record of the proceedings shall be made and shall be available to the public following the completion of the trial. For the protection of innocent persons, the

court may order that names be deleted or substitutions therefor be made in the record.

Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees; Insulating Witnesses. Whenever appropriate, the court shall order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for dissemination by any means of public communication during the course of the trial.

Witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court.

Subd. 8. Admonitions to Jurors. Appropriate admonitions shall be given to the jury during the trial not to read, listen to, or watch reports about the case appearing in the news media.

Subd. 9. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If it is determined that material disseminated outside the trial proceedings raises serious questions of possible prejudice, the court may on its own motion and shall on motion of either party question each juror, out of the presence of the others, about his exposure to that material. The examination shall take place in the presence of counsel, and a verbatim record of the examination shall be kept.

Subd. 10. View by Jury.

a. When the court is of the opinion that a viewing by the jury of the place where the offense being tried was committed, or any other place involved in the case, will be helpful to the jury in determining any material factual issue, it may in its discretion, at any time before the closing arguments, order that the jury be conducted to such place.

b. The jury must be kept together during the viewing under the supervision of a proper officer appointed by the court. The judge and a court reporter must be present, and with the judge's permission any other person may be present. The prosecuting attorney, the defendant and defense counsel may as a matter of right be present, but the right may be waived.

c. The purpose of the viewing shall be solely to permit visual observation by the jury of the place in question, and neither the parties, counsel, nor the jurors while viewing the place may engage in discussion concerning the significance or implications of anything under observation or concerning any issue in the case.

Subd. 11. Order of Jury Trial. The order of a jury trial shall be substantially as follows:

a. The jury shall be selected and sworn.

b. The court may deliver preliminary instructions to the jury.

c. The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts he expects to prove.

d. The defendant may make an opening statement to the jury, or he may make it immediately before he offers evidence in his defense. The statement shall be confined to a statement of the defense and the facts he expects to prove in support thereof.

e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.

f. The defendant may offer evidence in his defense.

g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon his original case.

h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.

i. The defendant may then make a closing argument to the jury.

j. The court shall charge the jury.

k. The jury shall retire for deliberation and, if possible, render a verdict.

Subd. 12. Note Taking. Jurors may take notes of the evidence presented at the trial and may keep these notes with them when they retire for deliberation.

Subd. 13. Substitution of Judge.

(1) Before or During Trial. If by reason of death, sickness or other disability of the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification that he has familiarized himself with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

(2) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial, he may in his discretion grant a new trial.

Subd. 14. Exceptions.

(1) Exceptions Abolished. Exceptions to rulings or orders of the court or to the actions of a party are abolished. It is sufficient that a party, at the time the ruling or order of court is made or sought or the action of a party taken, makes known to the court the action which he desires the court to take or his objections to the action of the court or of a party and his grounds therefor; and, if a party has no opportunity to object to a ruling or order or action at the time it is made or taken the absence of an objection does not thereafter prejudice him.

(2) Bills of Exception and Settled Cases Abolished. The bill of exceptions and settled case shall not be required. The record of the case for the purposes for which a bill of exceptions or settled case was heretofore required shall consist of the papers filed in the trial court, the offered exhibits, and the minutes of the court, and the transcript of the proceedings, if any.

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

Subd. 16. Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law.

Subd. 17. Motion for Judgment of Acquittal.

(1) Motions Before Submission to Jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. After the evidence on either side is closed, the court on motion of a defendant or on its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the tab charge, indictment or complaint if the evidence is insufficient to sustain a conviction of such offense or offenses.

(2) Reservation of Decision on Motion. If the defendant's motion is made at the close of the evidence offered by the prosecution, the court may not reserve decision on the motion. If the defendant's motion is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict.

(3) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of

acquittal may be made or renewed within 15 days after the jury is discharged or within such further time as the court may fix during the 15-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. Such a motion is not barred by defendant's failure to make a similar motion prior to the submission of the case to the jury.

Subd. 18. Instructions.

(1) Requests for Instructions. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon the requests prior to the arguments to the jury, and such action shall be made a part of the record.

(2) Proposed Instructions. The court may, and upon request of any party shall, before the arguments to the jury, inform counsel what instructions will be given and all such instructions may be stated to the jury by either party as a part of his argument.

(3) Objections to Instructions. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict. The matter to which objection is made and the grounds of the objection shall be specifically stated. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury. All objections to instructions and the rulings thereon shall be included in the record. All instructions, whether given or refused, shall be made a part of the record. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

(4) Giving of Instructions. The court in its discretion shall instruct the jury either before or after the arguments are completed except, at the discretion of the court, preliminary instructions need not be repeated. The instructions may be in writing and in the discretion of the court a copy may be taken to the jury room when the jury retires for deliberation.

(5) Contents of Instructions. In charging the jury the court shall state all matters of law which are necessary for the jury's information in rendering a verdict and shall inform the jury that it is the exclusive judge of all questions of fact. The court shall not comment on the evidence or the credibility of the witnesses, but may state the respective claims of the parties.

Subd. 19. Jury Deliberations and Verdict.

(1) Materials to Jury Room. The court shall permit the jury, upon retiring for deliberation, to take to the jury room exhibits which have been received in evidence, or copies thereof, except depositions and may permit a copy of the instructions to be taken to the jury room.

(2) Jury Requests to Review Evidence.

1. If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to re-examine the requested materials admitted into evidence.

2. The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(3) Additional Instructions After Jury Retires.

1. If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless:

(a) the jury may be adequately informed by directing their attention to some portion of the original instructions;

(b) the request concerns matters not in evidence or questions which do not pertain to the law of the case; or

(c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.

2. The court need not give additional instructions beyond those specifically requested by the jury, but in its discretion the court may also give or repeat other instructions to avoid giving undue prominence to the requested instructions.

3. The court after notice to the prosecutor and defense counsel may recall the jury after it has retired and give any additional instructions as the court deems appropriate.

(4) Deadlocked Jury. The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement.

(5) Polling the Jury. When a verdict is rendered and before the jury has been discharged, the jury shall be polled at the request of any party or upon the court's own motion. The poll shall be conducted by the court or clerk of court who shall ask each juror individually whether the verdict announced is his verdict. If the poll does not conform to the verdict, the jury may be directed to retire for further deliberation or may be discharged.

(6) Impeachment of Verdict. Affidavits of jurors shall not be received in evidence to impeach their verdict. If the defendant has reason to believe that the verdict is subject to impeachment, he shall move the court for a summary hearing. If the motion is granted the jurors shall be interrogated under oath and their testimony recorded. The admissibility of evidence at the hearing shall be governed by Rule 606(b) of the Minnesota Rule of Evidence.

(7) Partial Verdict. The court may accept a partial verdict when the jury has agreed on a verdict of conviction on less than all of the charges submitted, but is unable to agree on the remainder.

(Amended March 31, 1977, effective July 1, 1977.)

26.04 Post-Verdict Motions

Subd. 1. New Trial.

(1) Grounds. The court on written motion of the defendant may grant a new trial on any of the following grounds:

1. If required in the interests of justice;

2. Irregularity in the proceedings of the court, jury, or on the part of the prosecution, or any order or abuse of discretion, whereby the defendant was deprived of a fair trial;

3. Misconduct of the jury or prosecution;

4. Accident or surprise which could not have been prevented by ordinary prudence;

5. Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

6. Errors of law occurring at the trial, and objected to at the time or, if no objection is required by these rules, assigned in the motion;

7. The verdict or finding of guilty is not justified by the evidence, or is contrary to law.

(2) Basis of Motion. A motion for new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

(3) Time for Motion. Notice of a motion for a new trial shall be served within 15 days after verdict or finding of guilty. The motion shall be heard within 30 days after the verdict or finding of guilty, unless the time for hearing be extended by the court within the 30-day period for good cause shown.

(4) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Subd. 2. Motion to Vacate Judgment. The court on motion of a defendant shall vacate judgment, if entered, and dismiss the case if the indictment, complaint or tab charge does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within 15 days after verdict or finding of guilty or after plea of guilty, or within such time as the court may fix during the 15-day period.

Subd. 3. Joinder of Motions. Any motions for judgment of acquittal or to vacate judgment shall be joined with a motion for a new trial.

Subd. 4. New Trial on Court's Own Motion. The court, within 15 days after verdict or finding of guilty, with the consent of the defendant, may order a new trial upon any of the grounds specified in Rule 26.04, subd. 1(1).

Rule 27. Sentence and Judgment

27.01 Conditions of Release

When a defendant has been convicted and is awaiting sentence, the court may continue or alter the conditions for defendant's release, or may order confinement of the defendant, taking into account the conditions of release and the factors determining the conditions of release as provided by Rule 6.02, subd. 1 and subd. 2 and whether there is reason to believe that the defendant will flee or pose a danger to any person or to the community. The burden of establishing that the defendant will not flee or will not be a danger to any other person or to the community rests with the defendant.

27.02 Presentence Investigation in Misdemeanor Cases

In misdemeanor cases, the report of the presentence investigation may be oral if so directed by the court. If the presentence report is given orally, the defendant or his attorney shall be permitted to hear the report.

27.03 Sentencing Proceedings

Subd. 1. Hearings. Hearings upon the presentence report and upon the sentence to be imposed upon the defendant shall be held as provided by law. Before the sentencing proceeding, in a misdemeanor or gross misdemeanor case, each party shall notify the opposing party and the court of any part of a written presentence report which he intends to controvert by the production of evidence. Both the prosecutor and the defendant or his attorney shall have an opportunity to controvert any part of an oral presentence report and for such purpose the court may continue the sentencing.

The procedure for such hearings in felony cases shall be as follows:

(A) At the time of, or within three days after a plea, finding or verdict of guilt of a felony, the court may order a presentence investigation and shall order that a

sentencing worksheet be completed. As part of any presentence investigation and report, the court may order a mental or physical examination of the defendant. The court shall also then:

(1) Set a date for the return of the report of the presentence investigation.

(2) Set a date, time and place for the sentencing.

(3) Order the defendant to return at such date, time and place.

(4) If the facts ascertained at the time of a plea or through trial cause the judge to consider departure from the sentencing guidelines appropriate, the court shall advise counsel of such consideration.

(B) The presentence investigation report, if ordered, shall include the information required by Minn. Stat. sec. 609.115, subd. 1, a completed sentencing guidelines worksheet and any supplemental worksheets and such other information as the court may direct. The report shall be submitted to the court in triplicate.

(C) The court shall cause a copy of the sentencing worksheet and the nonconfidential portion of the presentence investigation report, if any, to be forwarded to the prosecutor and to the defendant and his attorney subject to the limitations of Minn. Stat. sec. 609.115, subd. 4. If the presentence investigation report contains a confidential information section that portion need not be forwarded to counsel or to defendant but counsel should be advised that such information is available for inspection at some designated place.

If departure from the sentencing guidelines appears appropriate, and the court has not previously notified the parties or counsel for the parties that the court is considering departure, the court shall forward notification of such consideration at the time the sentencing worksheet and any presentence investigation report is forwarded.

(D) Upon receipt of the sentencing worksheet and any presentence investigation report, any party desiring a sentencing hearing shall, not later than eight days before the date for the sentencing, file with the court and serve on opposing counsel a motion for such hearing, except that when the sentencing worksheet and any presentence investigation report is received within eight days prior to the sentencing date, the motion for a sentencing hearing shall be made within a reasonable time after receipt of the worksheet and any report. If necessary, the court shall continue the sentencing.

The motion for a sentencing hearing shall specifically set forth the reasons for the motion, including a designation of any portion of the presentence investigation report or sentencing guidelines worksheet challenged, and the grounds for the challenge supported by affidavits or other documentation.

(E) Opposing counsel shall file and serve any reply not later than three days before the sentencing date.

(F) At the sentencing hearing, issues raised in the sentencing hearing motion shall be heard. In addition, any remaining factual or legal issues relating to the sentence shall be succinctly stated on the record by counsel. The court shall also permit the record to be supplemented by such testimony as it deems relevant and material to the issues.

At the conclusion of the sentencing hearing, the court may state into the record findings of fact, conclusions of law and appropriate order on the issues submitted by the parties. Otherwise, the court shall issue written findings of fact, conclusions of law and appropriate order within twenty days of the conclusion of the sentencing hearing.

If it is determined upon hearing that the sentencing worksheet or supplement submitted as a part of any presentence investigation report contains an error or errors, the court shall cause a corrected worksheet to be prepared, filed and submitted to the sentencing guidelines commission.

(G) The court may impose sentence immediately following the conclusion of the sentencing hearing.

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

Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court shall give the prosecutor 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 him if he wishes to make a statement in his own behalf and to present any information before sentence. 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.

Subd. 4. Imposition of Sentence. When sentence is imposed the court:

(A) Shall state the precise terms of the sentence.

(B) Shall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed. Such time shall be automatically deducted from the sentence and the term of imprisonment including time spent in custody as a condition of probation from a prior stay of imposition or execution of sentence.

(C) For felony cases if the sentence imposed deviates from the sentencing guidelines applicable to the case, the court shall state into the record findings of fact as to the reasons for departure and shall forward, or cause to be forwarded, to the sentencing guidelines commission a copy of the transcript of that portion of the record or a completed departure form as provided by the commission.

(D) Prior to imposition of a sentence in a felony case which deviates from the sentencing guidelines, the court shall allow either party to request a sentencing hearing if no sentencing hearing was held and the court did not give prior notice that the sentence imposed might depart from the sentencing guidelines.

(E) If the court elects to stay imposition or execution of sentence, and:

(1) Requires a period of probation in felony cases, the court shall advise the defendant that non-custodial probation time may not be credited against his sentence in the event that probation is ultimately revoked and sentence executed.

(2) If noncriminal conduct could result in revocation, the trial court should advise the defendant so that he can be reasonably able to tell what lawful acts are prohibited.

(3) A written copy of the conditions of probation should be given to the defendant at the time of sentencing or soon thereafter.

(4) The defendant should be told that in the event of a disagreement between himself and his probation agent as to the terms and conditions of probation, he can return to the court for clarification if necessary.

Subd. 5. Notice of Right to Appeal. After imposition of sentence or granting of probation the court shall inform the defendant of his right to appeal the judgment of conviction or sentence or both and the right of a person who is unable to pay the cost of appeal to apply for leave to appeal at state expense by contacting the state public defender.

Subd. 6. Record. A verbatim record of the sentencing proceedings shall be made. In felony and gross misdemeanor cases any verbatim record made in accordance with this rule shall be transcribed. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

Subd. 7. Judgment. The clerk's record of a judgment of conviction shall contain the plea, the verdict of findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The sentence or stay of imposition of sentence is an adjudication of guilt.

Subd. 8. Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Subd. 9. Correction or Reduction of Sentence. The court at any time may correct a sentence not authorized by law. The court may at any time modify a sentence during either a stay of imposition or stay of execution of sentence except that the court may not increase the period of confinement.

(Amended March 31, 1977, effective July 1, 1977.)

27.04 Probation Revocation

Subd. 1. Commencement of Proceedings.

(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 issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. If the probationer fails to appear in response to a summons, a warrant may be issued.

(2) *Contents of Warrant and Summons.* Both the warrant and summons shall contain the name of the probationer, a description of the probationary sentence sought to be revoked, the signature of the issuing judge or judicial officer of the county or district court, and shall be accompanied by the written report upon which it was based. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and endorsed on the warrant. The warrant shall direct that the probationer be brought promptly before the court that issued the warrant if it is in session. If that court is not in session the warrant shall direct that the probationer be brought before a judge or judicial officer of that court, without unnecessary delay, and in any event not later than 36 hours after the arrest exclusive of the day of arrest, or as soon thereafter as such judge or judicial officer is available. The summons shall summon the probationer to appear at a stated time and place to respond to the revocation charges.

(3) *Execution or Service of Warrant or Summons; Certification.* Execution, service, and certification of the warrant or summons shall be as provided in Rule 3.03.

Subd. 2. First Appearance.

(1) *Advice to Probationer.* When a probationer initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, he shall be advised of the nature of the charge against him. He shall also be given a copy of the written report upon which the warrant or summons was based if he has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

a. That he is entitled to counsel at all stages of the proceedings, and if he is financially unable to afford counsel, one will be appointed for him at his request;

b. That unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that he has violated any conditions of probation and that probation should therefore be revoked;

c. That before the revocation hearing all evidence to be used against the probationer shall be disclosed to him and he shall be provided access to all official records pertinent to the proceedings;

d. That at the hearing both the prosecution and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

e. That the probationer has the right of appeal from the determinaton of the court following the revocation hearing.

(2) *Appointment of Counsel.* The appointment of counsel for a probationer financially unable to afford counsel shall be governed by the standards and procedures set forth in Rule 5.02.

(3) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding upon the conditions of release and whether to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by Rule 6.02, subd. 1 and subd. 2 and whether there is a reason to believe that the probationer will flee or pose a danger to any person in the community. The burden of establishing that the probationer will not flee or will not be a danger to any other person or the community rests with the probationer.

(4) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time before the court which granted probation. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven days. If the probationer has allegedly violated a condition of probation by commission of a crime, the court may postpone the revocation hearing pending disposition of the criminal case whether or not the probationer is in custody.

(5) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance before the court under this rule.

Subd. 3. Revocation Hearing.

(1) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of subd. 2(1) (a), (b), (c), and (d) of this rule.

(2) *Finding of No Violation of Conditions of Probation.* If the court finds that a violation of the conditions of probation has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's probation continued under the conditions theretofore ordered by the court.

(3) *Finding of Violation of Conditions of Probation.* If the court finds upon clear and convincing evidence that any conditions of probation have been violated, or if the probationer admits the violation, the court may proceed as follows:

a. Imposition of Sentence Stayed. If imposition of sentence was initially stayed, and probationer placed on probation, the court may again stay imposition of sentence or impose sentence and stay execution thereof, and in either event place the probationer on probation pursuant to Minn. Stat. sec. 609.135, or impose sentence and order the execution thereof.

b. Execution of Sentence. If execution of sentence initially imposed was stayed and probationer placed on probation, the court may continue the stay and place the probationer on probation in accordance with the provisions of Minn. Stat. sec. 609.135, or order execution of the sentence previously imposed.

(4) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written

findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(5) The probationer or the prosecution may appeal from the court's decision according to the procedure provided for appeal from a sentence by Rule 28.05.

Rule 28. Appeals to Court of Appeals

28.01 Scope of Rule

Subd. 1. Appeals from County and District Court. Rule 28 governs the procedure for appeals in misdemeanor, gross misdemeanor, and felony cases from the district courts and county courts to the Court of Appeals except for cases in which the defendant has been convicted of murder in the first degree.

Subd. 2. Applicability of Rules of Civil Appellate Procedure. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern appellate procedures in such cases.

Subd. 3. Suspension of Rules. In the interest of expediting decision, or for other good cause shown, the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction, but the Court of Appeals may not alter the time for filing notice of appeal except as provided by these rules.

28.02 Appeal by Defendant

Subd. 1. Review by Appeal. Except as provided by law for the issuance of the extraordinary writs and for the Post-Conviction Remedy, a defendant may obtain review of orders and rulings of the county or district courts by the Court of Appeals only by appeal as provided by these rules. Writs of error are abolished.

Subd. 2. Appeal as of Right.

(1) Final Judgment. A defendant may appeal as of right from any final judgment adverse to him. A judgment shall be considered final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury or the finding of the court, and sentence is imposed or the imposition of sentence is stayed.

(2) Orders. A defendant may not appeal until final judgment adverse to him has been entered by the trial court except that a defendant may appeal from an order refusing or imposing conditions of release or in felony and gross misdemeanor cases from:

1. an order granting a new trial when the defendant claims that the trial court should have entered a final judgment in his favor; or

2. an order, not on his motion, finding him incompetent to stand trial.

(3) Sentences. A defendant may appeal as of right from any sentence imposed or stayed in a felony case. All other sentences may be reviewed only pursuant to Rule 28.02, subd. 3.

Subd. 3. Discretionary Appeal. The Court of Appeals in the interests of justice and upon petition of the defendant may allow an appeal from an order not otherwise appealable, except an order made during trial, in the manner provided by the Minnesota Rules of Civil Appellate Procedure, provided that the petition shall be served and filed within thirty (30) days after entry of the order appealed.

Subd. 4. Procedure for Appeals Other than Sentencing Appeals.

(1) Service and Filing. An appeal shall be taken by filing a notice of appeal with the clerk of the appellate courts together with proof of service on the prosecuting attorney, the attorney general for the State of Minnesota, and the clerk of the trial court in which the judgment or order appealed from is entered. A bond shall not be required of a defendant for exercising his right to appeal. Unless

otherwise ordered by the appellate court, defendant need not file a certified copy of the judgment or order appealed from or a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure. Failure of the defendant to take any other step than timely filing the notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Contents of Notice of Appeal. The notice of appeal shall specify the party or parties taking the appeal; shall give the names, addresses, and telephone numbers of all counsel and indicate whom they represent; shall designate the judgment or order from which appeal is taken; and shall state that the appeal is to the Court of Appeals.

(3) Time for Taking an Appeal. An appeal by a defendant shall be taken within 90 days after final judgment or entry of the order appealed from in felony and gross misdemeanor cases and within 10 days after final judgment or entry of the order appealed from in misdemeanor cases. A notice of appeal filed after the announcement of a decision or order, but before sentencing or entry of judgment or order shall be treated as filed after such entry or sentencing and on the day thereof. If a timely motion to vacate the judgment, for judgment of acquittal, or for a new trial has been made, the time for an appeal from a final judgment does not begin to run until the entry of an order denying the motion, and the order denying the motion may be reviewed upon the appeal from the judgment.

A judgment or order is entered within the meaning of these appellate rules when it is entered upon the record of the clerk of the trial court.

For good cause the trial court or a judge of the Court of Appeals may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for appeal.

Subd. 5. Proceedings in Forma Pauperis. Proceedings on appeal or postconviction in forma pauperis shall be as follows:

(1) An indigent defendant wishing the service of an attorney in an appeal or postconviction case shall make application therefore to the office of the Public Defender, addressed as follows:

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

(2) The office of the State Public Defender shall promptly send to such applicant a financial inquiry form, preliminary questionnaire form and such other forms as deemed appropriate.

(3) The applicant shall, if he wishes to pursue his application, completely fill out these forms, sign each of these forms, and have his signature notarized on each of these forms if indicated.

(4) The applicant shall then return these completed documents to the office of the State Public Defender for further processing.

(5) The State Public Defender's office shall determine if the applicant is financially and otherwise eligible for representation. If the applicant is so eligible then the State Public Defender shall represent him regarding a judicial review or an evaluation of the merits of a judicial review of his case in a felony case and may so represent him in misdemeanor or gross misdemeanor cases. Upon the administrative determination by the State Public Defender's office that the office will represent an applicant for such a review or evaluation, the State Public Defender is automatically appointed for that purpose without order of the court. The State Public Defender's office shall notify the applicant of its decision on representation and advise him of any problem relative to his qualifications to obtain the services of the

State Public Defender's office. Any applicant who contests a decision of the State Public Defender's office that the applicant is ineligible for representation may apply to the Minnesota Supreme Court for relief.

(6) All requests for transcripts necessary for judicial review or efforts to have cases reviewed in which the defendant is not represented by an attorney shall be referred by the court receiving the same to the office of the State Public Defender for processing as in paragraphs (2) through (5) above.

(7) All clerks of court shall furnish the office of the State Public Defender copies of any documents in their possession, without the prior payment of the fees therefor and shall bill the office of the State Public Defender for these copies after they have been furnished to the State Public Defender's office.

(8) All fees, other than for furnishing copies of documents, including appeal fees, hearing fees or filing fees, ordinarily charged by the clerks of court shall automatically be waived in cases in which the State Public Defender's office, or other public defender's office, represents the defendant in question. Such fees shall also be waived by the court upon a sufficient showing by any other attorney that the defendant is unable to pay the fees required.

(9) Unless otherwise specifically provided by Supreme Court order, the State Public Defender's office shall be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of which county in the state is the county in which the defendant was accused.

(10) In postconviction cases, the cost of transcripts and other necessary expenses shall be borne by the State of Minnesota from funds available to the State Public Defender's office, regardless of which county in the state is the county in which the defendant was accused, if approved by the State Public Defender.

(11) The cost of transcripts and other necessary expenses in all indigent appeal cases shall likewise be paid from funds available to the State Public Defender's office when the county in which the defendant was accused is within a judicial district which has a District Public Defender, including Ramsey and Hennepin Counties, if approved by the State Public Defender.

(12) In all indigent appeal cases arising from judicial district which do not have a District Public Defender system, the costs of transcripts and other necessary expenses shall be borne by the county therein in which the defendant was accused.

(13) When a defendant is represented on appeal by the State Public Defender's office, the provisions of Rule 110.02, subd. 2 of the Minnesota Rules of Civil Appellate Procedure concerning the certificate as to transcript shall not apply. Rather, in such cases, the State Public Defender upon ordering the transcript shall mail a copy of the written request for transcript to the clerk of the trial court, the clerk of the appellate courts, and the prosecuting attorney. The reporter shall promptly acknowledge receipt of said order and his acceptance of it, in writing, with copies to the clerk of the trial court, the clerk of the appellate courts, the State Public Defender, and the prosecuting attorney and in so doing shall state the estimated number of pages of the transcript and the estimated completion date not to exceed 60 days. Upon delivery of the transcript, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

Subd. 6. Stay. When an appeal is taken by the defendant, the execution of judgment or sentence shall not be stayed unless a stay is granted by the trial court judge or a judge of the appellate court.

Subd. 7. Release of Defendant.

(1) Conditions of Release. Upon appeal, if the court grants a stay under subd. 6 of this rule, the conditions for defendant's release and the factors determining the conditions of release shall be governed by Rule 6.02, subd. 1 and subd. 2, except as hereinafter provided by this rule. The court shall also take into considera-

tion that the defendant may be compelled to serve the sentence imposed upon him before the appellate court has an opportunity to decide the case.

(2) Burden of Proof. Release pending appeal from a judgment of conviction upon which the defendant was sentenced to incarceration shall not be granted unless the defendant establishes to the satisfaction of the court that there is no substantial risk the defendant will not appear to answer the judgment following the conclusion of the appellate proceedings, that the defendant is not likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice, and that the appeal is not frivolous or taken for delay.

(3) Application for Release Pending Appeal. Application for release pending appeal shall be made in the first instance to the trial court. If the trial court refuses release pending appeal, or imposes conditions of release, the court shall state on the record the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review, may be made to the appellate court or a judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the prosecuting attorney. The appellate court or a judge thereof may order the release of the defendant pending disposition of the motion.

(4) Credit for Time Spent in Custody. All time the defendant is in custody pending an appeal shall be automatically deducted from the sentence imposed by the court.

Subd. 8. Record on Appeal. The record on appeal shall consist of the papers filed in the trial court, the offered exhibits, and the transcript of the proceedings, if any. Bills of exception and settled cases are abolished.

In lieu of the record as defined by this rule, the parties may within 60 days after filing of the notice of appeal prepare, sign, and file with the clerk of trial court a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court, stating only the claims and facts essential to a decision. If the statement is accurate, it, together with such additions as the trial court may consider necessary to present the issues raised by the appeal, shall be approved by the trial court and shall be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and memorandum relating thereto of the trial court shall be included with the record. If appellant intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without a statement of the case or transcript, he shall serve notice of his intent to do so on respondent and the clerk of the trial court and file the notice with the clerk of the appellate courts all within the time provided for ordering a transcript.

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. The Minnesota Rules of Civil Appellate Procedure to 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. 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 he intends to include in the record and a statement of the issues he intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he 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.

Subd. 10. Briefs. The appellant shall serve and file his brief and appendix within 60 days after delivery of the transcript by the reporter or after the filing of the

trial court's approval of the statement pursuant to subd. 8 of this rule or Rule 110.03 of the Minnesota Rules of Civil Appellate Procedure. In all other cases, if the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file his brief and appendix with the clerk of the appellate courts within 60 days after the filing of the notice of appeal. The respondent shall serve and file his brief and appendix, if any, within 45 days after service of the brief of appellant. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the form and filing of briefs and appendices except that the appellant's brief shall contain a statement of the procedural history.

Subd. 11. Scope of Review. On appeal from a judgment, the court may review any pretrial or trial order or ruling, whether or not a motion for new trial has been made, and may review the denial of a motion for new trial or to vacate judgment or for judgment of acquittal, whether ruled upon before or after judgment. The court may review any other matter as the interests of justice may require.

Subd. 12. Action on Appeal. On appeal from a judgment, if the court affirms the judgment, it shall direct the sentence as pronounced by the trial court or as modified by the appellate court pursuant to Rule 28.05, subd. 2, be executed. If it reverses the judgment, it shall either direct a new trial, or that the defendant be discharged or that the conviction be reduced to a lesser included offense or to an offense of lesser degree, as the case may require. If the conviction is reduced, the case shall be returned to the court which imposed the sentence for resentencing.

Subd. 13. Oral Argument.

(1) Allowance of Oral Argument. There shall be oral argument in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it at the time of serving and filing his initial brief, unless:

1. oral argument is forfeited by respondent pursuant to Rule 128.02 of the Minnesota Rules of Civil Appellate Procedure for failure to timely file a brief and appellant has either waived oral argument or not requested it;

2. oral argument is waived pursuant to Rule 134.06; or

3. the appellate court determines in the exercise of its discretion that oral argument is unnecessary because:

a. the dispositive issue or set of issues has been authoritatively settled; or

b. the briefs and record adequately present the facts and legal arguments and the decisional process would not be significantly aided by oral argument.

The clerk of the appellate court shall notify the parties when it has been determined that oral argument shall not be allowed under this provision. Any party so notified may request the court to reconsider its decision by serving on all other parties and filing with the clerk of the appellate courts a written request for reconsideration within 5 days of receipt of the notification that no oral argument shall be allowed. If, under this provision, oral argument is not allowed, the case shall be considered as submitted to the court at the time the clerk of the appellate courts notifies the parties that oral argument has been denied.

The Court of Appeals may direct presentation of oral argument in any case.

(2) Procedure Upon Oral Argument. Except in exigent circumstances, the oral argument shall be heard before the full panel to which the case has been assigned, and in any event shall be considered and decided by the full panel. Except as otherwise provided by this rule, the procedure upon oral argument including waiver and forfeiture of oral argument shall be as set forth in the Minnesota Rules of Civil Appellate Procedure.

28.03 Certification of Proceedings.

If, upon the trial of any person convicted in any court, or if, upon any motion to dismiss a tab charge, complaint or indictments, or upon any motion relating to the tab charge, complaint, or indictment, any question of law shall arise which in the opinion of the judge is so important or doubtful as to require a decision of the Court of Appeals, he shall, if the defendant shall request or consent thereto, report the case, so far as may be necessary to present the question of law, and certify the report to the Court of Appeals, whereupon all proceedings in the case shall be stayed until the decision of the Court of Appeals. The prosecuting attorney shall, upon certification of the report, forthwith furnish a copy to the attorney general at the expense of the county. Other criminal cases in such trial court involving or depending upon the same question, may, if the defendant so requests, or consents thereto, be stayed in like manner until the decision of the case so certified. Unless otherwise provided by order of the appellate court, the filing and serving of briefs upon certification shall be as provided in Rule 28.04, subd. 2(3).

28.04 Appeal by Prosecuting Attorney

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

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

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

Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecuting attorney shall be as follows:

(1) Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of proceedings of five (5) days to allow time to perfect the appeal.

(2) Notice of Appeal. Within five (5) days after entry of the order staying the proceedings, the prosecuting attorney shall file with the clerk of the appellate courts a notice of appeal and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary. Both the notice of appeal and request for transcript shall have attached at the time of filing, proof of service on the defendant or his attorney, the attorney general for the State of Minnesota, and the clerk of the trial court in which the pretrial order is entered. Failure 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).

(3) Briefs. Within fifteen (15) days of delivery of the transcripts, appellant shall file his brief with the clerk of the appellate courts together with proof of service upon the respondent. Within 8 days of service of appellant's brief upon him the respondent shall file his brief with said clerk together with proof of service upon the appellant. In all other respects the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the form and filing of briefs and appendices except that the appellant's brief shall contain a statement of the procedural history.

(4) Dismissal by Attorney General. In appeals by the prosecuting attorney, the attorney general may, in his discretion, within 20 days after entry of the order staying proceedings, dismiss the appeal and shall within 3 days thereafter give notice thereof to the judge of the lower court and file with the clerk of the appellate courts notice of such dismissal. The lower court shall then proceed as if no appeal had been taken.

(5) Oral Argument and Consideration. The provisions of Rule 28.02, subd. 13 concerning oral argument shall apply to appeals by the prosecuting attorney provided that the date of oral argument or submission of the case to the court without oral argument shall not be more than 3 months after all briefs have been filed. The Court of Appeals shall not hear or accept as submitted any such appeals more than 3 months after all briefs have been filed and in such cases the lower court shall then proceed as if no appeal had been taken.

(6) Attorney's Fees. Reasonable attorney's fees and costs incurred shall be allowed to the defendant on such appeal which shall be paid by the county in which the prosecution was commenced.

(7) Joinder. The prosecuting attorney may appeal from one or several of the orders under this rule joined in a single appeal.

(8) Time for Appeal. The prosecuting attorney may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and all issues raised therein have been determined by the trial court. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached.

An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

Subd. 3. Cross-Appeal by Defendant. Upon appeal by the prosecuting attorney, the defendant may obtain review of any pretrial order which will adversely affect him, by filing a notice of cross-appeal with the clerk of the appellate courts, together with proof of service on the prosecuting attorney, within 10 days after service of notice of the appeal by the prosecuting attorney under Rule 28.04, subd. 2(2). Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the cross-appeal.

Subd. 4. Conditions of Release. Upon appeal by the prosecuting attorney, the conditions for defendant's release pending the appeal shall be governed by Rule 6.02, subd. 1 and subd. 2. The court shall also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.

Subd. 5. Proceedings in Forma Pauperis. An indigent defendant wishing the services of an attorney in an appeal taken by the prosecuting attorney under this rule shall proceed under Rule 28.02, subd. 5.

28.05 Appeal from Sentence Imposed or Stayed

Subd. 1. Procedure. The following procedures shall apply to the appeal of a sentence imposed or stayed as permitted by these rules:

(1) Notice of Appeal and Briefs. Any party appealing a sentence shall file with the clerk of the appellate courts, within 90 days after judgment and sentencing, (a) a notice of appeal, (b) 9 copies of an informal letter brief setting forth the arguments concerning the illegality or inappropriateness of the sentence, (c) an affidavit of service of the notice upon opposing counsel, the attorney general, and the clerk of the trial court in which the sentence was imposed or stayed, and (d) an affidavit of service of the brief upon opposing counsel and upon the attorney general. A defendant appealing the sentence and the judgment of conviction has the option of combining the two appeals into a single appeal; when this option is selected the procedures established by Rule 28.02 of these rules shall continue to apply. The clerk of the appellate courts shall not accept a notice of appeal from sentence unless accompanied by the requisite briefs and affidavit of service.

(2) Transmission of Record. Upon receiving a copy of the notice of appeal, the clerk of the trial court shall immediately forward to the clerk of the appellate courts, (a) a transcript of the sentencing hearing and any written explanation of sentence by the trial court which is not already included in the transcript, (b) the sentencing guidelines worksheet, and (c) any presentence investigation report.

(3) Respondent's Brief. Within 10 days of service upon respondent of the copy of the notice of appeal and appellant's brief, respondent, if he wishes to respond, shall serve his informal letter brief upon appellant and file with the clerk of the appellate courts 9 copies of his brief.

(4) Other Procedures. The provisions of Rule 28.02, subd. 4(2) concerning the contents of the notice of appeal, Rule 28.02, subd. 5 concerning proceedings in forma pauperis, Rule 28.02, subd. 6 concerning stays, Rule 28.02, subd. 7 concerning the release of the defendant on appeal, and Rule 28.02, subd. 13 concerning oral argument shall apply to sentence appeals under this rule.

Subd. 2. Action on Appeal. On appeal of a sentence, the court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the sentencing court. This review shall be in addition to all other powers of review presently existing. The court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the court may direct.

Rule 29. Appeals to Supreme Court

29.01 Scope of Rules

Subd. 1. Appeals from Court of Appeals and in First Degree Murder Cases. Rule 29 governs the procedure in misdemeanor, gross misdemeanor, and felony cases for appeals from the Court of Appeals to the Supreme Court and from the district court to the Supreme Court in cases in which the defendant has been convicted of murder in the first degree.

Subd. 2. Applicability of Rules of Civil Appellate Procedure. Except as otherwise provided in these rules, the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern appellate procedure in such cases.

Subd. 3. Suspension of Rules. In the interest of expediting decision, or for other good cause shown, the Supreme Court may suspend the requirements or provisions of any of these rules in a particular case on application of any party or on its own motion and may order proceedings in accordance with its direction, but the Supreme Court may not alter the time for filing notice of appeal or filing a petition for review except as provided by these rules.

29.02 Right of Appeal

Subd. 1. Appeals in First Degree Murder Cases. A defendant may appeal as of right from the trial court to the Supreme Court only from a final judgment of conviction of murder in the first degree. Upon such an appeal the defendant may include other charges which were joined for prosecution with the first degree murder charge. Except as otherwise provided in Rule 118 of the Rules of Civil Appellate Procedure for accelerated review by the Supreme Court of cases pending in the Court of Appeals, there shall be no other direct appeals from the county court or district court to the Supreme Court.

Subd. 2. Appeals from Court of Appeals. A party may appeal from a final decision of the Court of Appeals to the Supreme Court only with leave of the Supreme Court.

29.03 Procedure for Appeals in First Degree Murder Cases

Subd. 1. Service and Filing. An appeal shall be taken by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts together with proof of service on the prosecuting attorney, the attorney general for the State of Minnesota, and the clerk of the trial court in which the judgment appealed from is entered. A bond shall not be required of a defendant for exercising his right to appeal. Unless otherwise ordered by the Supreme Court, defendant need not file a certified copy of the judgment appealed from or a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure. Failure of the defendant to take any other step than timely filing his notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems necessary, including dismissal of the appeal.

Subd. 2. Contents of Notice of Appeal. The notice of appeal shall specify the defendant taking the appeal; shall give the names, addresses, and telephone numbers of all counsel and indicate whom they represent; shall designate the judgment from which appeal is taken; and shall state that the appeal is to the Supreme Court.

Subd. 3. Time for Taking an Appeal. An appeal by a defendant from a final judgment of conviction of murder in the first degree shall be taken within 90 days after the final judgment. A judgment shall be considered final within the meaning of these rules when there is a judgment of conviction upon the verdict of a jury or the finding of the court, and sentence is imposed. A notice of appeal filed after the announcement of a decision, or order, but before sentencing or entry of judgment shall be treated as filed after such sentencing or entry and on the day thereof. If a timely motion to vacate the judgment, for judgment of acquittal, or for a new trial has been made, the time for an appeal from a final judgment does not begin to run until the entry of an order denying the motion, and the order denying the motion may be reviewed upon appeal from the judgment.

A judgment or order is entered within the meaning of these appellate rules when it is entered upon the record of the clerk of the trial court.

For good cause the trial court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for appeal.

Subd. 4. Other Procedures. The provisions of Rule 28.02, subd. 5, concerning proceedings in forma pauperis, Rule 28.02, subd. 6, concerning stays, Rule 28.02, subd. 7, concerning release of defendant, Rule 28.02, subd. 9, concerning the transcript of proceedings and transmission of the transcript and record, Rule 28.02, subd. 10, concerning briefs, Rule 28.02, subd. 11, concerning the scope of review, and Rule 28.02, subd. 12, concerning action on appeal, and Rule 29.04, subd. 9, concerning oral argument shall apply to appeals in first degree murder cases under this rule.

29.04 Procedure for Appeals from Court of Appeals

Subd. 1. Service and Filing. A party petitioning for review to the Supreme Court from the Court of Appeals shall file nine copies of a petition for review with the clerk of the appellate courts together with proof of service on adverse counsel and, when the petitioning party is not the attorney general, also proof of service on the attorney general for the State of Minnesota. A bond shall not be required of a defendant as a condition of petitioning for review. Failure of a party to take any other step than timely filing the petition for review does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate including dismissal of the appeal.

Subd. 2. Time for Petitioning. In cases originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, a party petitioning for review to the Supreme Court from the Court of Appeals shall serve and file the

petition for review within 20 days after the filing of the Court of Appeals' decision. For all other cases, a party petitioning for review to the Supreme Court from the Court of Appeals shall serve and file the petition for review within 30 days after the filing of the Court of Appeals' decision.

In all cases except those originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, a justice of the Court of Appeals or the Supreme Court may for good cause, before or after the time to serve and file a petition for review has expired, with or without motion and notice, extend the time for serving and filing such a petition for a period not to exceed 30 days from the expiration of the time otherwise prescribed herein for that purpose.

Subd. 3. Contents of Petition for Review. The petition for review shall not exceed 10 pages exclusive of the appendix and shall identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals and contain in order the following information:

(1) the names, addresses, and telephone numbers of the attorneys for all parties;

(2) the date the decision of the Court of Appeals was filed and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals;

(3) a concise statement of the legal issue or issues presented for review along with an indication of how each issue was decided in the trial court and in the Court of Appeals;

(4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals including a designation of the trial court and trial judge and the disposition of the case in the trial court and in the Court of Appeals;

(5) a concise statement of facts indicating briefly the nature of the case and including only those facts relevant to the issue or issues sought to be reviewed;

(6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and

(7) an appendix containing a copy of the written decision of the Court of Appeals and a copy of any recitation of the essential facts of the case, conclusions of law, and memoranda relating thereto from the trial court.

Subd. 4. Discretionary Review. Review of any decision of the Court of Appeals in discretionary with the Supreme Court. The following criteria may be considered:

(1) the question presented is an important one upon which the Supreme Court should rule;

(2) the Court of Appeals has ruled on the constitutionality of a statute;

(3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court;

(4) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers; or

(5) a decision by the Supreme Court will help develop, clarify, or harmonize the law; and

1. the case calls for the application of a new principle or policy;
2. the resolution of the question presented has possible statewide impact; or
3. the question is likely to recur unless resolved by the Supreme Court.

Subd. 5. Response to Petition. When a petition for review has been filed, the opposing party shall file nine copies of any response to the petition, not to exceed 10 pages exclusive of the appendix, with the clerk of the appellate courts together with proof of service on appellant within 20 days after service of the petition upon respondent. Failure to respond to the petition shall not be considered as agreement with the petition.

Subd. 6. Cross-Petition by Respondent. A respondent cross-petitioning for review to the Supreme Court shall file nine copies of a cross-petition for review, not to exceed 10 pages exclusive of the appendix, with the clerk of the appellate courts together with proof of service on appellant within 20 days after service of the petition for review on respondent or within 30 days after filing of the decision of the Court of Appeals, whichever is later. The cross-petition shall conform to the requirements of Rule 29.04, subd. 3, except that the procedural history, statement of facts, and appendix need not be included unless respondent is dissatisfied with them as they appear in the petition for review.

The court may permit a respondent, without filing a cross-appeal, to defend a decision of judgment on any ground that the law and record permit that would not expand the relief he has been granted.

Subd. 7. Action on Petition or Cross-Petition. The Supreme Court shall issue and file its order granting or denying permission to appeal or cross-appeal within 60 days of the date the petition is filed. Upon the filing of the order, the clerk of the appellate courts shall mail a copy of it to the attorneys for the parties.

Subd. 8. Briefs. Except as otherwise provided in subd. 10 of this rule, appellant shall serve and file his brief and appendix within 30 days after entry of the order granting permission to appeal and respondent shall serve and file his brief and appendix, if any, within 30 days after service of the brief of appellant. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. The Rules of Civil Appellate Procedure to the extent applicable shall otherwise govern the form and filing of briefs except that appellant's brief shall also include a statement of the procedural history.

Subd. 9. Oral Argument. Each party shall serve and file with his initial brief a notice stating whether oral argument is requested. Oral argument shall be granted unless the court determines it is unnecessary because:

(1) neither party has requested oral argument in the notice served and filed with the initial briefs;

(2) oral argument is forfeited pursuant to Rule 128.02 of the Rules of Civil Appellate Procedure; or

(3) oral argument is waived pursuant to Rule 134.06 of the Rules of Civil Appellate Procedure.

The Supreme Court may direct presentation or oral argument in any case.

Subd. 10. Appeals Involving Pretrial Orders.

(1) *Briefs.* In cases originally appealed to the Court of Appeals by the prosecuting attorney pursuant to Rule 28.04, the appellant shall within fifteen (15) days from the date of entry of the order granting permission to appeal serve his brief upon opposing counsel and file with the clerk of the appellate courts 14 copies thereof. Within eight (8) days of such service on respondent, respondent shall serve his brief upon appellant and file 14 copies thereof with said clerk.

(2) *Hearing.* Additionally in such cases the date of oral argument or submission of the case to the court without oral argument shall not be more than three months after all briefs have been filed. The Supreme Court shall not hear or accept as submitted any such appeal more than three months after all briefs have been filed and in such cases the lower court shall then proceed pursuant to the

judgment of the Court of Appeals as if no further appeal had been taken to the Supreme Court.

(3) *Attorney's Fees.* Reasonable attorney's fees and costs incurred shall be allowed to the defendant on an appeal to the Supreme Court by the prosecuting attorney in a case originally appealed by the prosecuting attorney to the Court of Appeals pursuant to Rule 28.04. Such fees shall be paid by the county in which the prosecution was commenced.

(4) *Conditions of Release.* Upon an appeal to the Supreme Court in a case originally appealed by the prosecuting attorney pursuant to Rule 28.04, the conditions for defendant's release pending the appeal shall be governed by Rule 6.02, subd. 1 and subd. 2.

Subd. 11. Other Procedures. The provisions of Rule 28.02, subd. 5, concerning proceedings in forma pauperis, Rule 28.02, subd. 6, concerning stays, Rule 28.02, subd. 7, concerning release of defendant, Rule 28.02, subd. 8, concerning record on appeal, Rule 29.02, subd. 11, concerning the scope of review, and Rules 28.02, subd. 12 and 28.05, subd. 2, concerning action on appeal shall apply to appeals to the Supreme Court from the Court of Appeals.

Rule 30 Dismissal

30.01 By Prosecuting Attorney

The prosecuting attorney may in writing or on the record, stating the reasons therefor, including the satisfactory completion of a pretrial diversion program, dismiss a complaint or tab charge without leave of court and an indictment with leave of court. In felony and gross misdemeanor cases, if the dismissal is on the record, it shall be transcribed and filed.

30.02 By Court

If there is unnecessary delay by the prosecution in bringing a defendant to trial, the court may dismiss the complaint, indictment or tab charge.

Rule 31. Harmless Error and Plain Error

31.01 Harmless Error

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

31.02 Plain Error

Plain errors or defects affecting substantial rights may be considered by the court upon motions for new trial, post-trial motions, and on appeal although they were not brought to the attention of the trial court.

Rule 32. Motions

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court or these rules permit it to be made orally. The motion shall state the grounds upon which it is made and shall set forth the relief or order sought and may be supported by affidavit.

Rule 33. Service and Filing of Papers

33.01 Service; Where Required

Written motions other than those which are heard ex parte, written notices, and other similar papers shall be served upon each of the parties.

33.02 Service; How Made

Whenever under these rules or by an order of court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the

court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions or as ordered by the court or as required by these rules.

33.03 Notice of Orders

Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a copy thereof and shall make a record of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by these rules.

33.04 Filing

(a) Except as provided in Rule 9.03, subd. 9, search warrants and search warrant applications, affidavits and inventories, including statements of unsuccessful execution, and papers required to be served shall be filed with the court. Papers shall be filed as provided in civil actions.

(b) Except as otherwise provided by this rule, search warrants and related documents need not be filed until after execution of the search or the expiration of ten days.

(c) A complaint, indictment, application, or affidavit requesting a warrant directing the arrest of a person or authorizing a search and seizure may contain or be accompanied by a request by the prosecuting attorney that the complaint, indictment, application or affidavit, any supporting evidence or information, and any order granting the request, not be filed.

(d) An order shall be issued granting the request in whole or in part, if the judge finds from affidavits, sworn testimony or evidence that there are reasonable grounds to believe that:

(1) in the case of complaint, indictment, or arrest documents, such filing may lead to any person to be arrested fleeing or secreting himself or otherwise preventing the execution of the warrant or

(2) in the case of a search warrant application or affidavit, such filing may cause this search or a related search to be unsuccessful or could create a substantial risk of injuring an innocent person or severely hampering an ongoing investigation.

(e) The order shall further direct that upon the execution of and return of an arrest warrant, the filing required by subd. (a) shall forthwith be complied with; and in the case of a search warrant, the application or affidavit in support thereof shall be filed forthwith following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, or at any other such time as directed by the judge. Until such filing, the documents and materials ordered withheld from filing shall be retained by the judge or the judge's designee.

Rule 34. Time

34.01 Computation

Except as provided by Rules 3.02, subd. 2(2), 4.02, subd. 5(1), and 4.02, subd. 5(3), time shall be computed as follows:

The day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is seven days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday (Presidents' Birthday), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the State.

34.02 Enlargement

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 26.03, subd. 17(3); 26.04, subd. 1(3); or 26.04, subd. 2, or except as provided by Rules 28.02, subd. 4(3), 29.03, subd. 3, and 29.04, subd. 2 the time for taking an appeal.

34.03 For Motions; Affidavits

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing unless a different period is fixed by rule or order of court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served not less than one day before the hearing unless the court permits them to be served at a later time.

34.04 Additional Time After Service by Mail

Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period.

34.05 Unaffected by Expiration

The continued existence or the expiration of a term of court does not affect or limit the period of time provided for the doing of any act or the taking of any proceeding, or affect the power of the court to do any act or take any proceeding in any action which has been pending before it.

Rule 35. Courts and Clerks

The district and county courts shall be deemed open at all times for the purpose of filing any proper paper, of issuing and returning or certifying process and of making motions and orders. Unless the court orders otherwise, the court shall be deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, or particular legal holidays.

TABLE OF SUPERSEDED STATUTES

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	488A.27, subd. 1, subd. 2
2	487.25, subd. 3
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3.02	629.46
3.03, subd. 2	629.43
4.02, subd. 5(3)	487.25, subd. 4
	488A.10, subd. 4
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6	487.25, subd. 8 to extent inconsistent
	488A.10, subd. 9 to extent inconsistent
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Rule	Statute Superseded
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	632.04

Rule	Statute Superseded
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	484.08 to extent inconsistent

The provisions of Chapter 633 are superseded to the extent that they are inconsistent with these rules.

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