

RULES GOVERNING CRIMINAL MATTERS
STATE OF MINNESOTA
IN SUPREME COURT

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

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

WHEREAS, the Supreme Court held a hearing on these and other recommended amendments on June 25, 1987, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, that the amendments to the Rules of Criminal Procedure be, and the same hereby are, prescribed and promulgated for the regulation of practice and procedure in criminal matters in the courts of the State of Minnesota;

IT IS FURTHER ORDERED, that these amendments to the Rules of Criminal Procedure shall govern all criminal actions commenced or arrests made after 12 o'clock midnight July 31, 1987;

IT IS FURTHER ORDERED, that the Advisory Committee continue to serve to monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the court from time to time.

Dated: June 29, 1987

BY THE COURT

-s-Douglas K. Amdahl
Chief Justice

Rules of Criminal Procedure

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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 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.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 1.02, see M.S. 1986, Volume 9]

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 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.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 2.02 and 2.03, see M.S. 1986, Volume 9]

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 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.

(Amended June 29, 1987, effective August 1, 1987.)

3.02 Contents of Warrant or Summons

[For text of subd 1, see M.S. 1986, Volume 9]

Subd. 2. Directions of Warrant. The warrant shall direct that the defendant be brought promptly before the court that issued the warrant if it is in session. If the court specified is not in session, the warrant officer shall direct 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.

[For text of subd 3, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 3.03 and 3.04, see M.S. 1986, Volume 9]

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

[For text of Rule 4.01, see M.S. 1986, Volume 9]

4.02 Arrest Without a Warrant

Following an arrest without a warrant:

[For text of subd 1, see M.S. 1986, Volume 9]

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 district court of the county where the alleged offense occurred or by any person designated by the court to perform that function.

[For text of subds 3 and 4, see M.S. 1986, Volume 9]

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 district court of the county where the alleged offense occurred or judicial officer of such court. 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 supplemental sworn testimony that there is probable cause to believe that an offense has been committed and that the defendant committed it. Upon the filing of a valid complaint, 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.

(Amended June 29, 1987, effective August 1, 1987.)

Rule 5. Procedure on First Appearance

[For text of Rules 5.01 and 5.02, see M.S. 1986, Volume 9]

5.03 Date of Rule 8 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 such appearance 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 the defendant's initial appearance before such judge or judicial officer under Rule 5.

The defendant shall be informed of the time and place of such appearance and ordered to appear as scheduled. 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, the defendant may be permitted to waive the separate 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 appearance under Rule 8 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.

(Amended June 29, 1987, effective August 1, 1987.)

5.04 Plea in Misdemeanor Cases

[For text of subd 1, see M.S. 1986, Volume 9]

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 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.

[For text of subds 3 to 5, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 5.05 and 5.06, see M.S. 1986, Volume 9]

5.07 (Deleted August 1, 1987.)

5.08 (Deleted August 1, 1987.)

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.

(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.

(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 court or by any person designated by the court to perform that function.

[For text of subd 2, see M.S. 1986, Volume 9]

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. The citation shall state that if the defendant fails to appear in response to the citation, a warrant of arrest may issue.

[For text of subds 4 and 5, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

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 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.

[For text of subds 2 to 4, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 6.03 to 6.06, see M.S. 1986, Volume 9]

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

8.01 Place of Appearance and Arraignment

The defendant's initial appearance following the complaint under this rule shall be held in the district court of the judicial district where the alleged offense was committed.

Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment; the defendant shall be arraigned upon the complaint or the complaint as it may be amended, 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.

(Amended June 29, 1987, effective August 1, 1987.)

8.02 Plea of Guilty

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

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 8.03, see M.S. 1986, Volume 9]

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 under this rule. The court may extend such time for good cause upon motion of the defendant or the prosecution or upon the court's own motion.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 8.05 and 8.06, see M.S. 1986, Volume 9]

Rule 9. Discovery in Felony and Gross Misdemeanor Cases

9.01 Disclosure by Prosecution

[For text of subd 1, see M.S. 1986, Volume 9]

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 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.

[For text of subd 3, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

9.02 Disclosure by Defendant

[For text of subd 1, see M.S. 1986, Volume 9]

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 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.

[For text of subds 3 and 4, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 9.03, see M.S. 1986, Volume 9]

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 Place of Hearing

The hearing shall be held in the district court in the judicial district wherein the alleged offense was committed.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 11.02 to 11.05, see M.S. 1986, Volume 9]

11.06 Pleas

At the hearing the defendant may be permitted to plead to the offense charged in the complaint or to a lesser included offense, or an offense of lesser degree as permitted by Rule 15.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 11.07 and 11.08, see M.S. 1986, Volume 9]

11.09 (Deleted, August 1, 1987.)

[For text of Rules 11.10 and 11.11, see M.S. 1986, Volume 9]

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 for a felony and six persons for a gross misdemeanor, and that he cannot be found guilty unless all jurors 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.)

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 15.02 to 15.04, see M.S. 1986, Volume 9]

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 proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentence. If a defendant is allowed to withdraw his plea after sentence, the court shall set aside the judgment and the plea.

[For text of subds 2 and 3, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 15.06 to 15.08, see M.S. 1986, Volume 9]

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 and filed with the clerk of court for the trial court within 30 days after the date of sentencing. In misdemeanor cases, any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

(Amended June 29, 1987, effective August 1, 1987.)

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 for a felony and six persons for a gross misdemeanor and all jurors would have to agree I was guilty before the jury could find me guilty.

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

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

16. I 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

(Amended June 29, 1987, effective August 1, 1987.)

APPENDIX B TO RULE 15

STATE OF MINNESOTA
COUNTY OF _____

IN DISTRICT COURT

State of Minnesota,
City of _____,
Plaintiff,

JUDICIAL DISTRICT
FILE NO. _____

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.

(Amended June 29, 1987, effective August 1, 1987.)

Rule 16. Misdemeanor Prosecution by Indictment

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; amended June 29, 1987, effective August 1, 1987.)

Rule 17. Indictment, Complaint and Tab Charge

[For text of Rules 17.01 and 17.02, see M.S. 1986, Volume 9]

17.03 Joinder of Offenses and of Defendants

[For text of subd 1, see M.S. 1986, Volume 9]

Subd. 2. Joinder of Defendants.

(1) *Felony and Gross Misdemeanor Cases.* When two or more defendants are jointly charged with a felony, they may be tried separately or jointly in the discretion of the court. In making its determination on whether to order joinder or separate trials, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to the defendant, and the interest of justice. In cases other than felonies, defendants jointly charged may be tried jointly or separately, in the discretion of the court. In all cases any one or more of 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.

[For text of subds 3 to 5, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 17.04 and 17.05, see M.S. 1986, Volume 9]

17.06 Motions Attacking Indictment, Complaint or Tab Charge

[For text of subds 1 to 3, see M.S. 1986, Volume 9]

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 court has so ordered.

(Amended March 31, 1977, effective July 1, 1977; amended June 29, 1987, effective August 1, 1987.)

Rule 18. Grand Jury

[For text of Rules 18.01 to 18.03, see M.S. 1986, Volume 9]

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 or has been granted use immunity, 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.

(Amended June 29, 1987, effective August 1, 1987.)

18.05 Record of Proceedings

[For text of subd 1, see M.S. 1986, Volume 9]

Subd. 2. Transcript. Upon motion of the defendant with notice to the prosecuting attorney, the district court at any time before trial 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.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 18.06 to 18.09, see M.S. 1986, Volume 9]

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

[For text of Rules 19.01 to 19.03, see M.S. 1986, Volume 9]

19.04 Appearance of Defendant Before Court

[For text of subs 1 to 3, see M.S. 1986, Volume 9]

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 indictment or be given additional time within which to plead.

[For text of subds 5 to 7, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 19.05 and 19.06, see M.S. 1986, Volume 9]

Rule 20. Proceedings for Mentally Ill or Mentally Deficient

20.01 Competency to Proceed

[For text of subd 1, see M.S. 1986, Volume 9]

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) *Misdemeanors.* 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.

[For text of subd 3, see M.S. 1986, Volume 9]

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 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.

[For text of subs 5 to 9, see M.S. 1986, Volume 9]

(Amended March 31, 1977, effective July 1, 1977; amended June 29, 1987, effective August 1, 1987.)

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

[For text of subs 1 to 7, see M.S. 1986, Volume 9]

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 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; amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 20.03, see M.S. 1986, Volume 9]

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 or such other dollar amount as is established by Minn. Stat., section 609.02, subd. 4a or other statute as the maximum fine for a petty misdemeanor.

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 23.02, see M.S. 1986, Volume 9]

23.03 Violations Bureaus

Subd. 1. Establishment. The district court may establish misdemeanor violations bureaus at the places it determines.

Subd. 2. Fine Schedules.

(1) *Uniform Fine Schedule.* The district 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 district court shall establish by court rule, for each county, 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 district court shall be the same as the fine prescribed in the uniform fine schedule.

[For text of subs 3 and 4, see M.S. 1986, Volume 9]

Subd. 5. Procedures of the Violations Bureau. The district court shall supervise and the clerk shall operate the misdemeanor violations bureaus. The district 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; amended June 29, 1987, effective August 1, 1987.)

[For text of Rules 23.04 to 23.06, see M.S. 1986, Volume 9]

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

The following rules shall govern the issuance of any court order excluding the public from any pretrial hearing and restricting access to any transcripts or orders developed from such closed pretrial hearings.

Subd. 1. Grounds for Exclusion of Public. All pretrial hearings shall be open to the public. However, the defendant, the prosecuting attorney or the court may move that all or part of such hearing be closed to the public on the ground that dissemination of evidence or argument adduced at the hearing may interfere with an overriding interest including that it may disclose matters that may be inadmissible in evidence at the trial and likely to interfere with a fair trial by an impartial jury. The motion shall not be granted unless the court determines that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing the hearing and the closure shall be no broader than is necessary to protect the overriding interest involved.

Subd. 2. Notice to Adverse Counsel. If, prior to trial, counsel for either the prosecution or the defense has evidence that he believes may be the subject of an exclusionary order, he has a duty first to advise opposing counsel of that fact and suggest that both counsel meet privately with the presiding judge in closed court and disclose to the court the problem. If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court.

Subd. 3. Meeting in Closed Court and Notice of Hearing. In closed court the court shall review the evidence outlined by counsel that may be the subject of a restrictive order. If the court feels that any of the proffered evidence may properly be the subject for a restrictive order, the court shall immediately docket a notice of hearing on a motion for a restrictive order made by either counsel or by the court. Such notice shall be docketed at least 24 hours before the hearing and shall be reasonably calculated to afford the public and the news media with an opportunity to be heard on whether the overriding interest claimed justifies closing the hearing to the public and the news media.

Subd. 4. Hearing. At the hearing held pursuant to such notice, the trial court shall advise all present that evidence has been disclosed to it that may be the subject of a closure order and shall give the public and the news media an opportunity to suggest any alternatives to a restrictive order.

Subd. 5. Findings of Fact. No exclusion order shall issue without the court setting forth the reasons therefor in written findings of fact. Such findings must include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate. Any matter to be decided which does not present the risk of revealing inadmissible, prejudicial information shall be decided openly and on the record.

Subd. 6. Records. Whenever under this rule all or part of any pretrial hearing is closed to the public, a complete record of those proceedings shall be made and upon request shall be transcribed at public expense 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.

Subd. 7. Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying an exclusion or restrictive order under this rule may petition the Court of Appeals for review, which shall be the exclusive method for obtaining review.

The Court of Appeals shall determine upon the hearing record whether the moving party sustained the burden of justifying the order under the conditions specified in this rule, and may reverse, affirm, or modify the order issued.

(Amended June 28, 1983, effective August 1, 1983; amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 25.02, see M.S. 1986, Volume 9]

25.03 Restrictive Orders

Except as provided in Rules 25.01, 26.03, subd. 6, and 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, provided that the notice shall be docketed at least 24 hours before the hearing and shall be reasonably calculated to afford the public and the news media with an opportunity to be heard on the matter.

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 and to suggest any alternatives to the restrictive order.

(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 substantial likelihood of interfering with the fair and impartial administration of justice.

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

The restrictive order shall be no broader than is necessary to protect against the potential interference with the fair and impartial administration of justice.

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. If the restrictive order is granted, the findings of fact shall include a review of the alternatives to the restrictive order and a statement of why the court believes such alternatives to be inadequate.

[For text of subd 5, see M.S. 1986, Volume 9]

(Amended June 28, 1983, effective August 1, 1983; June 29, 1987, effective August 1, 1987.)

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. All trials 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.

[For text of subd 2, see M.S. 1986, Volume 9]

(Amended March 31, 1977, effective July 1, 1977; amended June 29, 1987, effective August 1, 1987.)

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.

[For text of subds 2 to 8, see M.S. 1986, Volume 9]

(Amended November 13, 1978, effective January 1, 1979; amended June 29, 1987, effective August 1, 1987.)

26.03 Procedures During Trial

[For text of subds 1 to 5, see M.S. 1986, Volume 9]

Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules shall govern the issuance of any court order excluding the public from any portion of the trial that takes place outside the presence of the jury and restricting access to any transcripts or orders developed from such closed portions of the trial.

(1) *Grounds for Exclusion of Public.* If the jury is not sequestered, the defendant, the prosecuting attorney or the court 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 may interfere with an overriding interest including that it is likely to interfere with 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. In determining the motion the court shall consider reasonable alternatives to closing such portion of the trial and the closure shall be no broader than is necessary to protect the overriding interest involved.

(2) *Notice to Adverse Counsel.* If, during trial, counsel for either the prosecution or the defense has evidence that he believes may be the subject of an exclusionary order, he has a duty first to advise opposing counsel of that fact and suggest that both counsel meet privately with the presiding judge in closed court and disclose to the court the problem. If counsel for either side refuses to meet with the court, the court may order counsel to be present in closed court.

(3) *Meeting in Closed Court and Notice of Hearing.* In closed court the court shall review the evidence outlined by counsel that may be the subject of a restrictive order. If the court feels that any of the proffered evidence may properly be the subject for a restrictive order, the court shall immediately docket a notice of hearing on a motion for a restrictive order made by either counsel or by the court. Such notice shall be docketed at least 24 hours before the hearing and shall be reasonably calculated to afford the public and the news media with an opportunity to be heard on whether the overriding interest claimed justifies closing the hearing to the public and the news media.

(4) *Hearing.* At the hearing held pursuant to such notice, the trial court shall advise all present that evidence has been disclosed to it that may be the subject of a closure order and shall give the public and the news media an opportunity to suggest any alternatives to a restrictive order.

(5) *Findings of Fact.* No exclusion order shall issue without the court setting forth the reasons therefor in written findings of fact. Such findings must include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate. Any matter to be decided which does not present the risk of revealing inadmissible, prejudicial information shall be decided openly and on the record.

(6) *Records.* Whenever under this rule part of the proceedings are closed to the public, a complete record of those proceedings shall be made and upon request shall be transcribed at public expense and filed 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.

(7) *Appellate Review.* Anyone represented at the hearing or aggrieved by an order granting or denying an exclusion or restrictive order under this rule may petition the Court of Appeals for review, which shall be the exclusive method for obtaining review.

The Court of Appeals shall determine upon the hearing record whether the moving party sustained the burden of justifying the order under the conditions specified in this rule, and may reverse, affirm, or modify the order issued.

[For text of subds 7 to 10, see M.S. 1986, Volume 9]

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. On the motion of the prosecution, the court may permit the prosecution to reply in rebuttal if the court determines that the defense has made in its closing argument a misstatement of law or fact or a statement that is inflammatory or prejudicial. The rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

k. The court shall charge the jury.

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

[For text of subs 12 to 19, see M.S. 1986, Volume 9]

(Amended March 31, 1977, effective July 1, 1977; amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 26.04, see M.S. 1986, Volume 9]

Rule 27. Sentence and Judgment

[For text of Rules 27.01 and 27.02, see M.S. 1986, Volume 9]

27.03 Sentencing Proceedings

[For text of subs 1 to 3, see M.S. 1986, Volume 9]

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 departs from the sentencing guidelines applicable to the case, the court shall state, on 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. Such departure report shall be filed with the commission and the clerk of court for the trial court within 15 days after the date of sentencing.

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

(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.

[For text of subd 5, see M.S. 1986, Volume 9]

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 and filed with the clerk of court for the trial court within

30 days after the date of sentencing. In misdemeanor cases any such record need not be transcribed unless requested by the court, the defendant or the prosecuting attorney.

[For text of subds 7 to 9, see M.S. 1986, Volume 9]

(Amended March 31, 1977, effective July 1, 1977; amended June 29, 1987, effective August 1, 1987.)

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 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.

[For text of subds 2 and 3, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

Rule 28. Appeals to Court of Appeals

28.01 Scope of Rule

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

[For text of subds 2 and 3, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

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 district courts by the Court of Appeals only by appeal as provided by these rules. Writs of error are abolished.

[For text of subds 2 to 13, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 28.03, see M.S. 1986, Volume 9]

28.04 Appeal by Prosecuting Attorney

[For text of subd 1, see M.S. 1986, Volume 9]

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 appealed from, 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 governmental unit responsible for the prosecution involved.

(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.

[For text of subds 3 to 5, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 28.05, see M.S. 1986, Volume 9]

Rule 29. Appeals to Supreme Court

[For text of Rule 29.01, see M.S. 1986, Volume 9]

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 district court to the Supreme Court.

[For text of subd 2, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

[For text of Rule 29.03, see M.S. 1986, Volume 9]

29.04 Procedure for Appeals from Court of Appeals

[For text of subds 1 to 9, see M.S. 1986, Volume 9]

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 governmental unit responsible for the prosecution involved.

(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.

[For text of subd 11, see M.S. 1986, Volume 9]

(Amended June 29, 1987, effective August 1, 1987.)

Rule 35. Courts and Clerks

The district 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.

(Amended June 29, 1987, effective August 1, 1987.)