Minnesota Rules of Criminal Procedure

Revised effective January 1, 2010

TABLE OF HEADNOTES

TEXT OF RULES

Rule 1. Scope and Purpose of the Rules

[For text of 1.01 to 1.03, see M.S. 2010, Volume 15]

Rule 1.04 Definitions

As used in these rules, the following terms have the meanings given.

(a) Misdemeanor. Unless these rules direct otherwise, "misdemeanor" includes state statutes, local ordinances, charter provisions, or rules or regulations punishable - either alone or alternatively - by a fine or imprisonment of not more than 90 days.

(b) Designated Gross Misdemeanor. A "designated gross misdemeanor" is a gross misdemeanor charged or punishable under Minnesota Statutes, section 169A.20, 169A.25, 169A.26, or 171.24.

(c) Tab Charge. A "tab charge" is a brief statement of the charge entered in the record by the court administrator that includes a reference to the statute, rule, regulation, ordinance, or other provision of law the defendant is alleged to have violated. A tab charge is not synonymous with "citation" as defined in paragraph (e).

(d) Aggravated Sentence. An "aggravated sentence" is a sentence that is an upward durational or dispositional departure from the presumptive sentence provided for in the Minnesota Sentencing Guidelines based on aggravating circumstances or a statutory sentencing enhancement.

(e) Citation. A "citation" is a charging document issued under Rule 6. The citation may be filed in paper form or by electronic means.

(f) Electronic Citation. An "electronic citation" is a citation transmitted to the court by electronic means.

(g) Violations Bureau. "Violations bureau" refers to court staff who process citations. A violations bureau may consist of one or more employees within a single court location, a dedicated court division, or the Minnesota Court Payment Center implemented and operated by the State Court Administrator.

(Amended effective January 1, 2012.)

[For text of 1.05 and 1.06, see M.S. 2010, Volume 15]

Rule 6. Pretrial Release

Rule 6.01 Release on Citation

Subd. 1. Mandatory Citation Issuance in Misdemeanor Cases.

(a) By Arresting Officer. In misdemeanor cases, peace officers who decide to proceed with prosecution and who act without a warrant must issue a citation and release the defendant unless it reasonably appears:

(1) the person must be detained to prevent bodily injury to that person or another;

(2) further criminal conduct will occur; or

(3) a substantial likelihood exists that the person will not respond to a citation.

If the officer has already arrested the person, a citation must issue in lieu of continued detention, and the person must be released, unless any of the circumstances in subdivision 1(a)(1)-(3) above exist.

(b) At Place of Detention. When an officer brings a person arrested without a warrant for a misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff must issue a citation in lieu of continued detention unless it reasonably appears to the officer that any of the circumstances in subdivision 1(a)(1)-(3) exist.

(c) Offenses Not Punishable by Incarceration. A citation must be issued for petty misdemeanors and misdemeanors not punishable by incarceration. If an arrest has been made, a citation must be issued in lieu of continued detention.

(d) Reporting Requirements. If the defendant is not released at the scene or place of detention, the officer in charge of the place of detention must report to the court the reasons why.

Subd. 2. Permissive Authority to Issue Citations in Gross Misdemeanor and Felony Cases at Place of Detention.

When an officer brings a person arrested without a warrant for a felony or gross misdemeanor to a police station or county jail, the officer in charge of the police station, sheriff in charge of the jail, or officer designated by the sheriff may issue a citation and release the defendant unless it reasonably appears to the officer that any of the circumstances in subdivision 1(a)(1)-(3) exist.

Subd. 3. Mandatory Release on Citation When Ordered by Prosecutor or Court.

In felony, gross misdemeanor, and misdemeanor cases, a person arrested without a warrant must be issued a citation and released if so ordered by the prosecutor or by the district court, or by any person designated by the court to perform that function.

Subd. 4. Form of Citation.

(a) General Form. Any citation, including an electronic citation, filed or e-filed with the court must be in a form prescribed by this rule and approved by the State Court Administrator and the Commissioner of Public Safety, who shall, to the extent practicable, include in the citation the information required by Minnesota Statutes, sections 169.99, subdivisions 1, 1a, 1b, and 1c, and 97A.211, subdivision 1. The citation must contain the summons and complaint, and must direct the defendant to appear at a designated time and place or to contact the court or violations bureau to schedule an appearance.

(b) Notices Regarding Failure to Appear. The citation must state that failure to appear or contact the court or violations bureau as directed may result in the issuance of a warrant. A summons or warrant issued after failure to respond to a citation may be based on sworn facts establishing probable cause contained in or with the citation and attached to the complaint.

The citation must contain notice regarding failure to appear when the offense is a petty misdemeanor as required in Minnesota Statutes, sections 169.99, subdivision 1(b), and 609.491, subdivision 1.

(c) Notice Regarding Fine Payment. The citation must contain the notice regarding fine payment and waiver of rights in Rule 23.03, subd. 3.

(d) Electronic Citation. If the defendant is charged by electronic citation, the defendant must be issued a copy of the citation. This copy must include:

(1) the directive to appear or contact the court or violations bureau in paragraph (a); and

(2) the notices in paragraphs (b) and (c).

Subd. 5. Lawful Searches. The issuance of a citation does not affect an officer's authority to conduct an otherwise lawful search.

Subd. 6. Persons in Need of Care. Even if a citation has been issued, an officer can take the person cited to an appropriate medical or mental health facility if that person appears mentally or physically incapable of self care.

(Amended effective January 1, 2012.)

[For text of 6.02 to 6.06, see M.S. 2010, Volume 15]

Comment - Rule 6

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

The "uniform traffic ticket" as defined in Minnesota Statutes, section 169.99, is used to issue a citation under Rule 6. The citation is used to charge not only traffic offenses under Minnesota Statutes, chapter 169, but also criminal or Department of Natural Resources (DNR) offenses defined in other chapters. The State Court Administrator and the Commissioner of Public Safety determine the required content of the citation in consultation with the courts, law enforcement, and other affected agencies, including the DNR.

Rule 6.01, subd. 4(b), reiterates that the citation must contain the statutorily required notice that failure to appear for a petty misdemeanor offense results in a conviction. As stated in the rule, the citation must direct the defendant to either appear or contact the court by a particular date. This means a conviction will be entered under the statutory process: (1) if the defendant fails to appear on the scheduled court date; (2) if the defendant

fails to pay the fine or otherwise contact the court by the scheduled deadline; or (3) if the defendant requests an initial hearing on the citation but then fails to appear for it. The statutory conviction procedure is not applicable, however, if the defendant invokes the process available in the Rules of Criminal Procedure by making an initial appearance but then fails to appear for a subsequent hearing. See State v. Haney, 600 N.W.2d 469 (Minn. Ct. App. 1999) and Judicial Council Policy 515, Petty Misdemeanor Failure to Appear.

Rule 6.01, subd. 4(d), sets forth the content that must be included on the defendant's copy of an electronic citation. The defendant's copy of a paper citation typically contains additional information such as court contact information, payment methods, and collateral consequences. Since the Rules do not specifically require this information to be on the citation, when the defendant is issued an electronic citation, the additional information could be given to the defendant by other means such as directing the defendant to a website or providing a separate information sheet.

The arresting officer is to decide whether to issue a citation using the information available at the time. If that officer decides not to issue a citation, the officer-in-charge of the stationhouse will then make a determination from all the information then available, including any additional information disclosed by further interrogation and investigation.

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

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

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

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

The conditions of release must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case. Release on monetary conditions should only be required when no other conditions will reasonably ensure the defendant's appearance. When monetary conditions are imposed, bail should be set at the lowest level necessary to ensure the defendant's reappearance.

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

Statutes, section 629.53, and according to that statute the court can apply the deposit to any fine or restitution imposed.

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

If the court sets conditions of release, aside from an appearance bond, then the court must issue a written order stating those conditions. Any written order must be issued promptly and the defendant's release must not be delayed. In addition to providing a copy of the order to the defendant, the court must immediately provide it to the law enforcement agency that has or had custody of the defendant along with information about the named victim's whereabouts. This provision for a written order is in accord with Minnesota Statutes, section 629.715, which concerns conditions of release for defendants charged with crimes against persons. Written orders are required because it is important that the defendant, concerned persons, and law enforcement officers know precisely the conditions that govern the defendant's release.

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

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

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

Rule 6.03 prescribes the procedures followed when conditions of release are violated. The Rule requires issuing a summons rather than a warrant under circumstances similar to those required under Rule 3.01. Rule 6.03, subd. 3, requires only an informal hearing and does not require a showing of willful default, but leaves it to the court's discretion to determine under all of the circumstances whether to continue or revise the possible release conditions. On finding a violation, the court is not authorized to revoke the defendant's release without setting bail because such action is not permitted under Minnesota Constitution, article I, section 5. The court must continue or revise the release conditions, governed by the considerations set forth in Rule 6.02, subds. 1 and 2. Under those rules, the court may increase the defendant's bail. If the defendant is unable to post the increased bail or to meet alternative conditions of release, the defendant may be kept in custody.

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

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

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

Rule 7. Notice by Prosecutor of Omnibus Issues, Other Offenses Evidence, and Intent to Seek Aggravated Sentence

[For text of 7.01, see M.S. 2010, Volume 15]

Rule 7.02 Notice of Other Offenses

Subd. 1. Notice of Other Crime, Wrong, or Act. The prosecutor must notify the defendant or defense counsel in writing of any crime, wrong, or act that may be offered at the trial under Minn. R. Evid. 404(b). No notice is required for any crime, wrong, or act:

(a) previously prosecuted,

(b) offered to rebut the defendant's character evidence, or

(c) arising out of the same occurrence or episode as the charged offense.

Subd. 2. Notice of a Specific Instance of Conduct. The prosecutor must notify the defendant or defense counsel in writing of the intent to cross-examine the defendant or a defense witness under Minn. R. Evid. 608(b) about a specific instance of conduct.

Subd. 3. Contents of Notice. The notice required by subdivisions 1 and 2 must contain a description of each crime, wrong, act, or specific instance of conduct with sufficient particularity to enable the defendant to prepare for trial.

Subd. 4. Timing.

(a) In felony and gross misdemeanor cases, the notice must be given at or before the Omnibus Hearing under Rule 11, or as soon after that hearing as the other crime, wrong, act, or specific instance of conduct becomes known to the prosecutor.

(b) In misdemeanor cases, the notice must be given at or before the pretrial conference under Rule 12, if held, or as soon after the hearing as the other crime, wrong, act, or specific instance of conduct becomes known to the prosecutor. If no pretrial conference occurs, the notice must be given at least seven days before trial or as soon as the prosecutor learns of the other crime, wrong, act, or specific instance of conduct.

(Amended effective September 1, 2011.)

[For text of 7.03 and 7.04, see M.S. 2010, Volume 15]

Rule 22. Subpoena

Rule 22.01 For Attendance of Witnesses; For Documents

Subd. 1. Witnesses. A subpoena may be issued for attendance of a witness:

(a) before a grand jury;

(b) at a hearing before the court;

(c) at a trial before the court; or

(d) for the taking of a deposition.

The subpoena must command attendance and testimony at the time and place specified.

Subd. 2. Documents.

(a) A subpoena may command a person to produce books, papers, documents, or other designated objects.

(b) The court may direct production in court of the books, papers, documents, or objects designated in the subpoena, including medical reports and records ordered disclosed under Rule 20.03, subd. 1, before the trial or before being offered in evidence, and may permit the parties or their attorneys to inspect them.

Subd. 3. Unrepresented Defendant. A defendant not represented by an attorney may obtain a subpoena only by court order. The request and order may be written or oral. An oral order must be noted in the court's record.

Subd. 4. Grand Jury Subpoena. A grand jury subpoena must be captioned "In the matter of the investigation by the grand jury of ....." (Insert here the name of the county or counties conducting the investigation.)

Subd. 5. Motion to Quash. The court on motion promptly made may quash or modify a subpoena if compliance would be unreasonable.

(Amended effective September 1, 2011.)

Rule 22.02 By Whom Issued

Subd. 1. By the Court. The court administrator issues a subpoena under the court's seal, signed but otherwise blank, to the attorney for the party requesting it, who must fill in the blanks before service. The subpoena must state the name of the court and the title of the proceeding if the subpoena is for a hearing, trial, or deposition.

Subd. 2. By an Attorney. Alternatively, an attorney, as an officer of the court, may issue a subpoena in a case in which the attorney represents a party. The attorney must personally sign the completed subpoena on behalf of the court, using the attorney's name. A subpoena issued by an attorney need not bear a seal, but must otherwise comply with the format requirements in subdivision 1. The completed subpoena must include:

(a) the attorney's printed name;

(b) attorney-registration number;

(c) office address and phone number; and

(d) the party the attorney represents.

Subd. 3. Deposition and Grand Jury Subpoenas. Subpoenas for a deposition may be issued only if the court under Rule 21.01 has ordered a deposition, or the parties under Rule 21.08 have stipulated to one. When so ordered or stipulated, deposition subpoenas may be issued only as provided in subdivision 1 or 2 above, or in the case of unrepresented defendants, only by court order under Rule 22.01, subd. 3. Grand jury subpoenas may be issued only by the court administrator.

(Amended effective September 1, 2011.)

[For text of 22.03, see M.S. 2010, Volume 15]

Rule 22.04 Place of Service

A subpoena may be served anywhere in the state.

(Amended effective September 1, 2011.)

[For text of 22.05, see M.S. 2010, Volume 15]

Rule 22.06 Witness Outside the State

The attendance of a witness who is outside the state may be secured as provided by Minnesota Statutes, section 634.07 (Nonresidents Required to Testify in State).

(Amended effective September 1, 2011.)

Comment - Rule 22

In addition to Rule 22.01, subd. 3, Minnesota Statutes, section 611.06, also addresses the issuance of subpoenas to unrepresented defendants and states that Rule 22.01, subd. 3, applies. The statute also requires that the issuance of subpoenas to self-represented defendants is without cost to the defendant.

Rule 22 applies only to criminal proceedings in Minnesota. It does not affect Minnesota Statutes, section 634.06, which provides a method for compelling Minnesota residents to testify in criminal cases in other states.

Rule 23. Petty Misdemeanors and Violations Bureaus

[For text of 23.01 and 23.02, see M.S. 2010, Volume 15]

Rule 23.03 Violations Bureaus

Subd. 1. Establishment. The district court may implement and operate violations bureaus. The State Court Administrator may implement and operate the Minnesota Court Payment Center.

Subd. 2. Fine Schedules.

(1) Uniform Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for statutory petty misdemeanors and for statutory misdemeanors as it selects. The uniform fine schedule is applicable statewide.

(2) County Fine Schedules. Each district court may establish by court rule for each county a fine for any ordinance that may be paid to the violations bureau in lieu of a court appearance by the defendant. When an ordinance offense is substantially the same as an offense included on the uniform fine schedule, the fine established must be the same.

Subd. 3. Fine Payment. A defendant must be advised in writing before paying a fine to a violations bureau that payment constitutes a plea of guilty to the charge and an admission that the defendant understands and waives the right to:

a. a court or jury trial;

b. counsel;

c. be presumed innocent until proven guilty beyond a reasonable doubt;

d. confront and cross-examine all witnesses; and

e. remain silent or testify for the defense.

(Amended effective January 1, 2012.)

[For text of 23.04 to 23.06, see M.S. 2010, Volume 15]

Rule 26. Trial

[For text of 26.01, see M.S. 2010, Volume 15]

Rule 26.02 Jury Selection

Subd. 1. Jury List. The jury list must be composed of persons randomly selected from a fair cross-section of qualified county residents. The jury must be drawn from the jury list.

Subd. 2. Juror Information.

(1) Jury Panel List. Unless the court orders otherwise after a hearing, the court administrator must furnish to any party, upon request, a list of persons on the jury panel, including name, city as reported on the juror questionnaire, occupation, education, children's ages, spouse's occupation, birth date, reported race and whether or not of Hispanic origin, gender, and marital status.

(2) Anonymous Jurors. On any party's motion, the court may restrict access to prospective and selected jurors' names, addresses, and other identifying information if a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality.

The court must hold a hearing on the motion and make detailed findings of fact supporting its decision to restrict access to juror information.

The findings of fact must be made in writing or on the record in open court. If ordered, jurors may be identified by number or other means to protect their identity. The court may restrict access to juror identity as long as necessary to protect the jurors. The court must minimize any prejudice the restriction has on the parties.

(3) Jury Questionnaire. On the request of a party or on its own initiative, the court may order use of a jury questionnaire as a supplement to voir dire. The questionnaire must be approved by the court. The court must tell prospective jurors that if sensitive or embarrassing questions are included on the questionnaire, instead of answering any particular questions in writing they may request an opportunity to address the court in camera, with counsel and the defendant present, concerning their desire that the answers not be public. When a prospective juror asks to address the court in camera, the court must proceed under subdivision 4(4) and decide whether the particular questions may be answered during oral voir dire with the public excluded. The court must make the completed questionnaires available to counsel.

Subd. 3. Challenge to Panel. Any party may challenge the jury panel if a material departure from law has occurred in drawing or summoning jurors. The challenge must be made in writing and before the court swears in the jury. The challenge must specify grounds. The court must conduct a hearing to determine the sufficiency of the challenge.

Subd. 4. Voir Dire Examination.

(1) Purpose - How Made. The court must allow the parties to conduct voir dire examination to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges. The examination must be open to the public unless otherwise ordered under subdivision 4(4). The court must begin by identifying the parties and their respective counsel and by outlining the nature of the case. The court must question jurors about their qualifications to serve and may give the preliminary instructions in Rule 26.03, subd. 4. A verbatim record of the voir dire examination must be made at any party's request.

(2) Sequestration of Jurors.

(a) Court's Discretion. The court may order that the examination of each juror take place outside of the presence of other chosen and prospective jurors.

(b) Prejudicial Publicity. Whenever a significant possibility exists of exposure to prejudicial material, the examination of each juror with respect to the juror's exposure must take place outside the presence of other prospective and selected jurors.

(3) Order of Drawing, Examination, and Challenge.

(a) Jury Selection Methods. Three methods exist for selecting a jury:

(i) the preferred method found in paragraph (b), in which the parties make peremptory challenges at the end of voir dire;

(ii) the alternate method found in paragraph (c), in which a party exercises any peremptory challenge after questioning the prospective juror;

(iii) the preferred method for first-degree murder cases found in paragraph (d), in which each party questions the prospective juror out of the hearing of the other prospective and selected jurors.

(b) Preferred Method; Cases Other Than First-Degree Murder.

(i) The court must draw prospective jurors comprising the number of jurors required, the number of peremptory challenges, and the number of alternates.

(ii) The prospective jurors must take their place in the jury box and be sworn in.

(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause must be made, first by the defense and then by the prosecutor.

(v) When the court excuses a prospective juror for cause, another must be drawn so that the number in the jury box remains the same as the number initially called.

(vi) After all challenges for cause have been made, the parties may alternately exercise peremptory challenges, starting with the defendant.

(vii) The jury consists of the remaining panel members in the order they were called.

(c) Alternate Method; Cases Other Than First-Degree Murder.

(i) The court must draw prospective jurors comprising the total of the number of jurors required and the number of alternates.

(ii) The prospective jurors must take their place in the jury box and be sworn in.

(iii) The prospective jurors must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) On completion of the defendant's examination of a prospective juror, the defendant must be permitted to exercise a challenge for cause or a peremptory challenge.

(v) On completion of the defendant's examination and any challenge of a prospective juror, the prosecutor may examine the prospective juror and may exercise a challenge for cause or a peremptory challenge.

(vi) An excused prospective juror must be replaced by another. The replacement must be examined and challenged after all previously drawn jurors have been examined and challenged.

(vii) This process continues until the number of persons who will constitute the jury, including the alternates, have been selected.

(d) Preferred Method; First-Degree Murder Cases.

(i) The court must direct that one prospective juror at a time be drawn from the jury panel for examination.

(ii) The prospective juror must be sworn in.

(iii) The prospective juror must be examined, first by the court, then by the parties, commencing with the defendant.

(iv) On completion of defendant's examination, the defendant may exercise a challenge for cause or peremptory challenge.

(v) A prospective juror who is not excused after examination by the defendant may be examined by the state. The state may exercise a challenge for cause or peremptory challenge.

(vi) This process must continue until the number of jurors equals the number required plus alternates.

(4) Exclusion of the Public From Voir Dire. In those rare cases where it is necessary, the following rules govern orders excluding the public from any part of voir dire or restricting access to the orders or to transcripts of the closed proceeding.

(a) Advisory. When it appears prospective jurors may be asked sensitive or embarrassing questions during voir dire, the court may on its own initiative or on request of either party, advise the prospective jurors that they may request an opportunity to address the court in camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive or embarrassing questions are asked.

(b) In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera during sensitive or embarrassing questioning, the request must be granted. The hearing must be on the record with counsel and the defendant present.

(c) Standards. In considering the request to exclude the public during voir dire, the court must balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order voir dire

closed only if it finds a substantial likelihood that conducting voir dire in open court would interfere with an overriding interest, including the defendant's right to a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. The court must consider alternatives to closure. Any closure must be no broader than necessary to protect the overriding interest.

(d) Refusal to Close Voir Dire. If the court determines no overriding interest exists to justify excluding the public from voir dire, the voir dire must continue in open court on the record.

(e) Closure of Voir Dire. If the court determines that an overriding interest justifies closure of any part of voir dire, that part of voir dire must be conducted in camera on the record with counsel and the defendant present.

(f) Findings of Fact. Any order excluding the public from a part of voir dire must be issued in writing or on the record. The court must set forth the reasons for the order, including findings as to why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open voir dire. The order must address any possible alternatives to closure and explain why the alternatives are inadequate.

(g) Record. A complete record of the in camera proceedings must be made. On request, the record must be transcribed within a reasonable time and filed with the court administrator. The transcript must be publicly available, but only if disclosure can be accomplished while safeguarding the overriding interests involved. The court may order the transcript or any part of it sealed, the name of a juror withheld, or parts of the transcript excised if the court finds these actions necessary to protect the overriding interest that justified closure.

Subd. 5. Challenge for Cause.

(1) Grounds. A juror may be challenged for cause on these grounds:

1. The juror's state of mind - in reference to the case or to either party - satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.

2. A felony conviction unless the juror's civil rights have been restored.

3. The lack of any qualification prescribed by law.

4. A physical or mental disability that renders the juror incapable of performing the duties of a juror.

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

6. Standing as a guardian, ward, attorney, client, employer, employee, landlord, tenant, family member of the defendant, or person alleged to have been injured by the offense, or whose complaint instituted the prosecution.

7. Being a party adverse to the defendant in a civil action, or a party who complained against the defendant, or whom the defendant accused, in a criminal prosecution.

8. Service on the grand jury that found the indictment or an indictment on a related offense.

9. Service on a trial jury that tried another person for the same or a related offense as the pending charge.

10. Service on any jury previously sworn to try the pending charge.

11. Service as a juror in any case involving the defendant.

(2) How and When Exercised. A challenge for cause may be oral and must state grounds. The challenge must be made before the juror is sworn to try the case, but the court for good cause may permit it to be made after the juror is sworn but before all the jurors

constituting the jury are sworn. If the court sustains a challenge for cause, the juror must be excused.

(3) By Whom Tried. If a party objects to the challenge for cause, the court must determine the challenge.

Subd. 6. Peremptory Challenges. In cases punishable by life imprisonment the defendant has 15 peremptory challenges and the prosecutor has nine. For any other offense, the defendant has five peremptory challenges and the prosecutor has three. In cases with more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly. The prosecutor's peremptory challenges must be correspondingly increased. All peremptory challenges must be exercised out of the hearing of the jury panel.

Subd. 7. Objections to Peremptory Challenges.

(1) Rule. No party may purposefully discriminate on the basis of race or gender in the exercise of peremptory challenges.

(2) Procedure. Any party, or the court, at any time before the jury is sworn, may object to a peremptory challenge on the ground of purposeful racial or gender discrimination. The objection and all arguments must be made out of the hearing of all prospective or selected jurors. All proceedings on the objection must be on the record. The objection must be determined by the court as promptly as possible, and must be decided before the jury is sworn.

(3) Determination. The trial court must use a three-step process for determining whether a party purposefully discriminated on the basis of race or gender:

(a) First, the party making the objection must make a prima facie showing that the responding party exercised its peremptory challenges on the basis of race or gender. If the court raised the objection, the court must determine, after any hearing it deems appropriate, whether a prima facie showing exists. If no prima facie showing is found, the objection must be overruled.

(b) Second, if the prima facie showing has been made, the responding party must articulate a race- or gender-neutral explanation for exercising the peremptory challenge(s). If the responding party fails to articulate a race- or gender-neutral explanation, the objection must be sustained.

(c) Third, if the court determines that a race- or gender-neutral explanation has been articulated, the objecting party must prove that the explanation is pretextual. If the court initially raised the objection, it must determine, after any hearing it deems appropriate, whether the party exercised the peremptory challenge in a purposefully discriminatory manner on the basis of race or gender. If purposeful discrimination is proved, the objection must be sustained; otherwise the objection must be overruled.

(4) Remedies. If the court overrules the objection, the prospective juror must be excused. If the court sustains the objection, the court must - based upon its determination of what the interests of justice and a fair trial to all parties in the case require - either:

(a) Disallow the discriminatory peremptory challenge and resume jury selection with the challenged prospective juror reinstated on the panel; or

(b) Discharge the entire jury panel and select a new jury from a jury panel not previously associated with the case.

Subd. 8. Order of Challenges. Challenges must be made in the following order:

a. To the panel.

b. To an individual prospective juror for cause, except that under subdivision 5(2) a challenge for cause may be made at any time before a jury is sworn.

c. Peremptory challenge to an individual prospective juror.

Subd. 9. Alternate Jurors. The court may impanel alternate jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider its verdict. If a juror becomes unable to serve, an alternate juror must replace that juror. Alternate jurors replace jurors in the order the alternates were drawn. No additional peremptory challenges are allowed for alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial must be declared unless the parties agree under Rule 26.01, subd. 1(4) that the jury consist of a lesser number than that selected for the trial.

(Amended effective September 1, 2011.)

Rule 26.03 Procedures During Trial

Subd. 1. Defendant's Presence.

(1) Presence Required. The defendant must be present at arraignment, plea, and for every stage of the trial including:

(a) jury selection;

(b) opening statements;

(c) presentation of evidence;

(d) closing argument;

(e) jury instructions;

(f) any jury questions dealing with evidence or law;

(g) the verdict;

(h) sentencing.

If the defendant is disabled in communication, a qualified interpreter must also be present at each proceeding.

(2) Presence Waived. The trial may proceed to verdict without the defendant's presence if:

1. The defendant is absent without justification after the trial starts; or

2. The defendant, after warning, engages in conduct that justifies expulsion from the courtroom because it disrupts the trial or hearing. But, as an alternative to expulsion, the court may use restraints if necessary to ensure order in the courtroom.

(3) Presence Not Required.

1. Corporations. A corporation may appear by counsel.

2. Felony and Gross Misdemeanors. In felony and gross misdemeanor cases, the court may, on the defendant's motion, excuse the defendant's presence except at arraignment, plea, trial, and sentencing.

3. Misdemeanors. In misdemeanor cases, if the defendant consents either in writing or on the record, the court must excuse the defendant from appearing for arraignment or plea, and the court may excuse the defendant from appearing at trial or sentencing.

4. ITV or Telephone. If a defendant consents, the court may allow the parties, lawyers, or the court to appear using ITV or telephone in any proceeding where the defendant could waive appearance under these rules.

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

a. During trial, the defendant must be seated to permit effective consultation with defense counsel and to see and hear the proceedings.

b. During trial, an incarcerated defendant or witness must not appear in court in the distinctive attire of a prisoner.

c. Defendants and witnesses must not be subjected to physical restraint while in court unless the court:

1. Finds the restraint necessary to maintain order or security; and

2. States the reasons for the restraints on the record outside the hearing of the jury.

d. If the restraint is apparent to the jury, and the defendant requests, the judge must instruct the jury that the restraint must not be considered in reaching the verdict.

Subd. 3. Media Access and Courtroom Decorum.

(a) The court must ensure the preservation of decorum in the courtroom.

(b) The court may reserve seats in the courtroom for reporters.

(c) The court may advise reporters about the proper use of the courtroom and other court facilities, or about courtroom decorum.

Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements, the court may instruct the jury on the parties' respective claims and on other matters that will aid the jury in comprehending the order of trial and trial procedures. Preliminary instructions may include the:

(a) burden of proof;

(b) presumption of innocence;

(c) necessity of proof of guilt beyond a reasonable doubt;

(d) factors the jury may consider in weighing testimony or determining credibility of witnesses;

(e) rules applicable to opinion evidence;

(f) elements of the offense;

(g) other rules of law essential to the proper understanding of the evidence.

The preliminary instructions must be disclosed to the parties before they are given, and any party may object to specific instructions or propose other instructions.

Subd. 5. Jury Sequestration.

(1) Discretion of the court. From the time the jurors are sworn until they retire for deliberations, the court may permit them and any alternate jurors to separate during recesses and adjournments, or direct that they remain together continuously under the supervision of designated officers.

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

(3) During Deliberations. Unless the court has ordered sequestration under paragraph (2), the court may allow the jurors to separate over night during deliberations.

(4) No Outside Contact. The supervising officers must not communicate with any juror concerning any subject connected with the trial, nor permit any other person to do so, and must return the jury to the courtroom as ordered by the court.

Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules govern orders restricting public access to portions of the trial conducted outside the presence of the jury or restricting access to trial transcripts, or an order arising from a closed portion of the trial.

(1) Grounds for Exclusion of Public.

(a) If the jury is not sequestered, on motion of a party or the court's own motion, the court may order that the public be excluded from portions of the trial held outside the jury's presence if the court finds that public dissemination of evidence or argument at the hearing would likely interfere with an overriding interest, including the right to a fair trial.

(b) Alternative Measures. Before restricting public access, the court must consider reasonable alternatives to restricting public access. The restriction must be no broader than necessary to protect the overriding interest involved, including the right to a fair trial.

(2) Notice. If any party wishes to bring a motion excluding the public, the party must request a closed meeting with counsel and the court.

(3) Closed Hearing and Public Notice. At the closed hearing, the court must review the evidence sought to be excluded from public access. If the court finds restriction appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing. The notice must allow the public, including reporters, an opportunity to be heard on whether any overriding interests exist, including the right to a fair trial, that would justify closing the hearing to the public.

(4) Hearing. At the hearing the court must disclose that evidence exists that may justify restricting access. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.

(5) Findings. An order and supporting findings of fact restricting public access must be in writing. The order must address alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not endanger the overriding interests involved, including the right to a fair trial, must be decided on the record in open court.

(6) Records. If the court closes a portion of the trial, a record of the non-public proceedings must be made. If anyone makes a request, the record must be transcribed at public expense. The record must be publicly available after the trial. The court may redact names from the record to protect the innocent.

(7) Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

The Court of Appeals must determine whether the party who moved for public exclusion met the burden justifying the exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.

Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees. The court may order attorneys, parties, witnesses, jurors, and employees and officers of the court not to make extra-judicial statements relating to the case or the issues in the case for public dissemination during the trial.

Subd. 8. Sequestration. The court may sequester witnesses from the courtroom before their appearance.

Subd. 9. Admonitions to Jurors. The court may advise the jurors not to read, listen to, or watch news reports about the case.

Subd. 10. Questioning Jurors About Exposure to Potentially Prejudicial Material in the Course of a Trial. If the court determines that material disseminated outside the trial proceedings raises questions of possible prejudice, the court may on its initiative, and must on motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination must take place in the presence of counsel, and a record of the examination must be made.

Subd. 11. View by Jury.

a. The court may allow the jury to view a place relevant to a case at any time before closing arguments if doing so would be helpful to the jury in deciding a material factual issue.

b. At the viewing:

(1) The jury must be kept together under the supervision of an officer appointed by the court;

(2) The judge and the court reporter must be present;

(3) The prosecutor, defendant and defense attorney have the right to be present; and

(4) Others may be present if authorized by the court.

c. The purpose of the viewing is limited to visual observation of the place in question, and neither the parties, nor counsel or the jurors while viewing the place may discuss the significance or implications of anything under observation or any issue in the case.

Subd. 12. Order of Jury Trial.

a. The jury is selected and sworn.

b. The court may deliver preliminary jury instructions.

c. The prosecutor may make an opening statement limited to the facts the prosecutor expects to prove.

d. The defendant may make an opening statement after the prosecutor's opening statement, or make an opening statement at the beginning of the defendant's case. The defendant's statement must be limited to the defense and the facts the defendant expects to offer supporting that defense.

e. The prosecutor presents evidence in support of the state's case.

f. The defendant may offer evidence in defense.

g. The prosecutor may rebut the defense evidence, and, the defense may rebut the prosecutor's evidence. In the interests of justice, the court may allow any party to reopen that party's case to offer additional evidence.

h. The prosecutor may make a closing argument.

i. The defendant may make a closing argument.

j. The prosecutor may make a rebuttal argument limited to a direct response to the defendant's closing argument.

k. On motion, the court may allow a defense rebuttal if the court finds the prosecution has made a misstatement of law or fact or an inflammatory or prejudicial statement in rebuttal. Rebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.

l. Outside the jury's presence, the court must allow the parties to object to the other party's argument and request curative instructions. The parties may also object and seek curative instructions before or during argument.

m. The court instructs the jury.

n. The jury deliberates and, if possible, renders a verdict.

Subd. 13. Note Taking. Jurors may take notes during the presentation of evidence and use them during deliberation.

Subd. 14. Substitution of Judge.

(1) Before or During Trial. If a judge is unable to preside over pretrial or trial proceedings due to death, illness, or other disability, any other judge in the district, once familiar with the record, may finish the proceedings or trial.

(2) After Verdict or Finding of Guilt. If a judge is unable to preside due to death, illness or other disability after verdict or finding of guilt, any other judge in the district may finish the proceedings. If the subsequent judge determines the proceedings cannot be finished because the judge did not preside at the trial, the judge may order a new trial.

(3) Interest or Bias of Judge. A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause must be heard and determined by the chief judge of the district or by the assistant chief judge if the chief judge is the subject of the request.

(4) Notice to Remove. A party may remove a judge assigned to preside at a trial or hearing as follows:

(a) A notice to remove must be served on the opposing counsel and filed with district court within seven days after the party receives notice of the name of the presiding judge at the trial or hearing;

(b) The notice must be filed before the start of the trial or hearing; and

(c) The notice is not effective against a judge who already presided at the trial, Omnibus Hearing, or evidentiary hearing if the removing party had notice the judge would preside at the hearing.

(5) After a party removes a judge under paragraph (4) that party may remove a subsequent judge only for cause.

(6) Recusal. The court may recuse itself from presiding over a case without a motion.

(7) Assignment of New Judge. If a judge is unavailable for any reason under this rule, the chief judge of the judicial district must assign another judge within the district to hear the matter. If no other judge in the district is available, the chief judge must notify the chief justice. The chief justice must assign a judge of another district to preside over the matter.

Subd. 15. Objections. An objection to a court order or ruling is preserved for appeal if the party indicates on the record its objection or position. If no opportunity existed to object or indicate a position, the absence of an objection or stated position does not prejudice the party.

Subd. 16. Evidence. At trial, witness testimony must be taken in open court, unless these rules provide otherwise.

Jurors may not submit questions to a witness directly or through the judge or attorneys.

If either party offers an audio or video recording, that party may offer a transcript of the recording, which will be part of the record.

Subd. 17. Interpreters. The court must appoint and compensate interpreters as provided under Minn. Gen. R. Prac. 8. Interpreters may be appointed and be present during deliberations for a juror with a sensory disability.

Subd. 18. Motion for Judgment of Acquittal or Insufficient Evidence for an Aggravated Sentence.

(1) Before Deliberations.

(a) Charged Offense. At the close of evidence for either party, the defendant may move for, or the court on its own may order, a judgment of acquittal on one or more of the charges if the evidence is insufficient to sustain a conviction.

(b) Aggravated Sentence. The defendant may move for, or the court on its own may order, that any aggravating factors be withdrawn from consideration by the jury if the evidence is insufficient to prove them.

(2) Reservation of Decision. If the defendant's motion is made at the close of the prosecution's case, the court must rule on the motion. If the defendant's motion is made at the close of the defendant's case, the court may reserve ruling on the motion, submit the case to the jury, and rule before or after verdict. If the court grants the defendant's motion after a verdict of guilty, the court must make a written finding stating the reason for the order.

(3) After Verdict or Discharge.

(a) If the jury returns a verdict of guilty or is discharged without verdict, a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged or within any further time as the court may fix during the 15-day period.

(b) If the jury finds aggravating factors, the defendant may move the court to determine that the evidence is insufficient to sustain them.

(c) If the court grants the defendant's motion for a judgment of acquittal or determines that the evidence is insufficient to sustain the aggravating factors, the court must make written findings stating the reasons for the order.

(d) If no verdict is returned, the court may enter judgment of acquittal. If no finding of an aggravating factor is made, the court may enter a finding of insufficient evidence to support an aggravated sentence.

(e) A motion for a judgment of acquittal or that the evidence is insufficient to sustain an aggravated sentence is not barred by a failure to move before deliberations.

Subd. 19. Instructions.

(1) Requests for Instructions. Any party may request specific jury instructions at or before the close of evidence. The request must be provided to all parties.

(2) Proposed Instructions. The court may, and on request must, tell the parties on the record before the arguments to the jury what instructions will be given to the jury including a ruling on the requests made by any party.

(3) In Argument. Any party may refer to the instructions during final argument.

(4) Objections.

(a) No party may claim error for any instruction not objected to before deliberation.

(b) The party's objection must state specific grounds.

(c) The court must give the parties the opportunity to object outside the jury's presence.

(d) The objection must be made on the record.

(e) All instructions, given or refused, must be made a part of the record.

(f) Objections to instructions claiming error in fundamental law or controlling principle may be included in a motion for a new trial even if not raised before deliberations.

(5) Giving of Instructions. The court may instruct the jury before or after argument. Preliminary instructions need not be repeated. The instructions may be in writing and may be taken into the jury room during deliberations.

(6) Contents of Instructions. The court must instruct the jury on all matters of law necessary to render a verdict and must instruct the jury that they are the exclusive judges of the facts. The court must not comment on evidence or witness credibility, but may state the respective claims of the parties.

(7) Verdict Forms. The court must submit appropriate verdict forms to the jury. An aggravated sentence form must be in the form of a special interrogatory.

Subd. 20. Jury Deliberations and Verdict.

(1) Materials Allowed in Jury Room. The court must permit received exhibits or copies, except depositions and audio or video material, into the jury room. The court may permit a copy of jury instructions into the jury room.

(2) Requests to Review Evidence. The court may allow the jury to review specific evidence.

(a) If the jury requests review of specific evidence during deliberations, the court may permit review of that evidence after notice to the parties and an opportunity to be heard.

(b) Any jury review of depositions, or audio or video material, must occur in open court. The court must instruct the jury to suspend deliberations during the review.

(c) The prosecutor, defense counsel, and the defendant must be present for the proceedings described in paragraphs (a) and (b), but the defendant may personally waive the right to be present.

(d) The court need not submit evidence beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence.

(3) Additional Instructions. If the jury asks for additional instruction on the law during deliberation, the court must give notice to the parties. The court's response must be given in the courtroom.

(a) The court may give additional instructions.

(b) The court may reread portions of the original instructions.

(c) The court may tell the jury that the request deals with matters not in evidence or not related to the law of the case.

(d) The court may tell the jury that the request is a factual matter that the jury, not the judge, must determine.

(e) The court need not give instructions beyond the jury's request, but may do so to avoid giving undue prominence to the requested instructions.

(f) The court may give additional instructions without a jury request during deliberations. The court must give notice to the parties of its intent to give additional instructions.

(4) Deadlocked Jury. The jury may be discharged without a verdict if the court finds there is no reasonable probability of agreement.

(5) Polling the Jury.

(a) When a verdict is returned, or the jury answered special interrogatories related to an aggravated sentence, and before the jury is discharged, either party may request that the jury be polled. The court must poll the jury on request. The court may poll the jury on its own initiative.

(b) The poll must be done by the court or the court's clerk. Each juror must be asked individually whether the announced verdict or finding is that juror's verdict or finding.

(c) If a juror indicates the announced verdict or finding is not that juror's verdict or finding, the court may return the jury to deliberations or discharge the jury.

(6) Verdict Impeachment. A defendant may move the court for a hearing to impeach the verdict. Juror affidavits are not admissible to impeach a verdict. At an impeachment hearing, jurors must be examined under oath and their testimony recorded. Minn. R. Evid. 606(b) governs the admissibility of evidence at an impeachment hearing.

(7) Partial Verdicts. The court may accept a partial verdict if the jury has reached a verdict on fewer than all of the charges and is unable to reach a verdict on the rest.

(b) The court need not submit evidence beyond what the jury requested but may submit additional evidence on the same issue to avoid giving undue prominence to the requested evidence.

(Amended effective September 1, 2011.)

[For text of 26.04, see M.S. 2010, Volume 15]

Rule 28. Appeals to Court of Appeals

[For text of 28.01, see M.S. 2010, Volume 15]

Rule 28.02 Appeal by Defendant

Subd. 1. Review by Appeal. A defendant may obtain Court of Appeals review of district court orders and rulings only as these rules permit, or as permitted by the law for the issuance of the extraordinary writs and for the Postconviction Remedy. Writs of error are abolished.

Subd. 2. Appeal as of Right.

(1) Final Judgment and Postconviction Appeal. A defendant may appeal as of right from any adverse final judgment, or from an order denying in whole or in part a petition for postconviction relief under Minnesota Statutes, chapter 590. A final judgment within the meaning of these rules occurs when the district court enters a judgment of conviction and imposes or stays a sentence.

(2) Orders. A defendant cannot appeal until the district court enters an adverse final judgment, but may appeal:

(a) from an order refusing or imposing conditions of release; or

(b) in felony and gross misdemeanor cases from an order:

1. granting a new trial, and the defendant claims that the district court should have entered a final judgment in the defendant's favor;

2. not on the defendant's motion, finding the defendant incompetent to stand trial; or

3. denying a motion to dismiss a complaint following a mistrial, and the defendant claims retrial would violate double jeopardy.

(3) Sentences. A defendant may appeal as of right from any sentence imposed or stayed in a felony case. Subdivision 3 governs sentencing appeals in non-felony cases.

Subd. 3. Discretionary Review. In the interests of justice and on petition of the defendant, the Court of Appeals may allow an appeal from an order not otherwise appealable, but not from an order made during trial. The petition must be served and filed within 30 days after entry of the order appealed. Minn. R. Civ. App. P. 105 governs the procedure for the appeal.

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

(1) Service and Filing. A defendant appeals by filing a notice of appeal with the clerk of the appellate courts with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment or order appealed from is entered. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case provided for in Minn. R. Civ. App. P. 133.03 unless the appellate court directs otherwise. The defendant does not have to post bond to appeal. The defendant's failure to take any step other than timely filing the notice

of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal.

(2) Contents of Notice of Appeal. The notice of appeal must specify:

(a) the party or parties taking the appeal;

(b) the names, addresses, and telephone numbers of all counsel and whom they represent;

(c) the judgment or order from which appeal is taken; and

(d) that the appeal is to the Court of Appeals.

(3) Time for Taking an Appeal.

(a) In felony and gross misdemeanor cases, an appeal by the defendant must be filed within 90 days after final judgment or entry of the order being appealed. Other charges that were joined for prosecution with the felony or gross misdemeanor may be included in the appeal.

(b) In misdemeanor cases, an appeal by the defendant must be filed within ten days after final judgment or entry of the order being appealed.

(c) In postconviction relief cases, an appeal by the defendant from an order denying a petition for postconviction relief must be filed within 60 days after entry of the order.

(d) A notice of appeal filed after the announcement of a decision or order - but before sentencing or entry of judgment or order - must be treated as filed after, but on the same day as sentencing or entry of judgment.

(e) A timely motion to vacate the judgment, for judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in the appeal from the judgment.

(f) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.

(g) For good cause, the district court or a judge of the Court of Appeals may, before or after the time for appeal has expired, with or without motion and notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.

(4) Stay of Appeal for Postconviction Proceedings. If, after filing a notice of appeal, a defendant determines that a petition for postconviction relief is appropriate, the defendant may file a motion to stay the appeal for postconviction proceedings.

Subd. 5. Proceeding in Forma Pauperis. A defendant who wishes to proceed in forma pauperis under this rule must follow this process:

(1) An indigent defendant wanting to appeal or to obtain postconviction relief must apply to the State Public Defender's office.

(2) The State Public Defender's office must promptly send the applicant a financial inquiry form, preliminary questionnaire form, and other forms as deemed appropriate.

(3) The applicant must completely fill out these forms, sign them, and have his or her signature notarized if indicated.

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

(5) The State Public Defender's office must determine if the applicant is financially and otherwise eligible for representation. If the applicant qualifies, then the State Public Defender's office must provide representation in felony cases regarding a judicial review

or an evaluation of the merits of a judicial review of the case, and may so represent the applicant in misdemeanor or gross misdemeanor cases.

Upon the administrative determination by the State Public Defender's office that it will represent an applicant for a judicial review or an evaluation of the merits of a judicial review of the case, the office is automatically appointed without order of the court. The State Public Defender's office must notify the applicant of its decision on representation and advise the applicant of any problem relative to the applicant's qualifications to obtain its services. Any applicant who contests a decision of the State Public Defender's office that the applicant does not qualify for representation may apply to the Minnesota Supreme Court for relief.

(6) If the court receives a request for transcripts necessary for judicial review or other efforts to have cases reviewed from a defendant who does not have counsel, the court must refer the request to the State Public Defender's office for processing as in paragraphs (2) through (5) above.

(7) If the court receives a request for transcripts made by an indigent defendant represented by private counsel, the court must submit the request to the State Public Defender's office for processing as follows:

a. The State Public Defender's office must determine financial eligibility of the applicant as in paragraphs (2) through (5) above.

b. If the defendant qualifies financially, he or she may request the State Public Defender to order all parts of the trial transcript necessary for effective appellate review. The State Public Defender's office must order and pay for these transcripts.

c. If a dispute arises about the parts of the trial transcript necessary for effective appellate review, the defendant or the State Public Defender's office may make a motion for resolution of the matter to the appropriate court.

d. The State Public Defender's office must provide the transcript to the indigent defendant's attorney for use in the direct appeal. The attorney must sign a receipt for the transcript agreeing to return it to the State Public Defender's office after the appeal process.

(8) All court administrators must furnish the State Public Defender's office without charge copies of any documents relevant to the case.

(9) All fees - including appeal fees, hearing fees, or filing fees - ordinarily charged by the clerk of the appellate courts or court administrators are waived when the State Public Defender's office, or other public defender's office, represents the defendant. The court must also waive these fees on a sufficient showing by any other attorney that the defendant cannot pay them.

(10) The State Public Defender's office must be appointed to represent all eligible indigent defendants in all appeal or postconviction cases as provided above, regardless of the county where the prosecution occurred, unless the Supreme Court directs otherwise.

(11) In appeal cases and postconviction cases, the State of Minnesota must bear the cost of transcripts and other necessary expenses from funds available to the State Public Defender's office, if approved by that office, regardless of where the prosecution occurred.

(12) For defendants represented on appeal by the State Public Defender's office, Minn. R. Civ. App. P. 110.02 subd 2, concerning the certificate as to transcript, does not apply. In these cases, the State Public Defender's office on ordering the transcript must mail a copy of the written request for transcript to the court administrator, the clerk of the appellate courts, and the prosecutor.

The court reporter must promptly acknowledge its receipt and indicate acceptance in writing, with copies to the court administrator, the clerk of the appellate courts, the State Public Defender's office, and the prosecutor. In so doing, the court reporter must state the

estimated number of pages of the transcript and the estimated completion date. That date cannot exceed 60 days, but for guilty plea and sentencing transcripts, it cannot exceed 30 days. Upon delivery of the transcript, the reporter must file with the clerk of the appellate courts a certificate evidencing the date and manner of delivery.

(13) A defendant may proceed pro se on appeal only after the State Public Defender's office has first had the opportunity to file a brief on the defendant's behalf. When that office files and serves the brief, it must also provide a copy of the brief to the defendant. If the defendant then chooses to proceed pro se on appeal or to file a supplemental brief, the defendant must so notify the State Public Defender's office.

(14) Upon receiving notice under paragraph (13) that the defendant has chosen to proceed pro se on appeal or to file a supplemental brief, the State Public Defender's office must confer with the defendant about the reasons for choosing to do so and advise the defendant concerning the consequences of that choice.

(15) To proceed pro se on appeal following consultation, the defendant must sign and return to the State Public Defender's office a detailed waiver of counsel as provided by that office for the particular case.

(16) If the State Public Defender's office believes, after consultation, that the defendant may not be competent to waive counsel it must assist the defendant in seeking an order from the district court determining the defendant's competency or incompetency.

(17) The court must consider the brief filed by the State Public Defender's office on the defendant's behalf. A defendant, whether or not choosing to proceed pro se, may also file with the court a supplemental brief. The supplemental brief must be filed within 30 days after the State Public Defender's office files its initial brief.

(18) If a defendant requests a copy of the transcript, the State Public Defender's office must confer with the defendant concerning the need for the transcript. If the defendant still requests a copy of it, one must be provided to the defendant temporarily.

(19) Upon receiving the transcript, the defendant must sign a receipt for it including an agreement not to make it available to other persons and to return the transcript to the State Public Defender's office when the time to file any supplemental brief expires.

(20) The transcript remains the property of the State Public Defender's office and must be returned upon expiration of the time to file any supplemental brief. Upon return of the transcript, the State Public Defender's office must provide the defendant with a copy of a signed receipt for it. The State Public Defender's office must promptly file the original of the receipt with the clerk of the appellate courts, and until that occurs, the clerk will not accept the supplemental brief for filing.

Subd. 6. Stay. When a defendant files an appeal, this does not stay execution of the judgment or sentence unless a district court judge or a judge of the appellate court grants a stay.

Subd. 7. Release of Defendant.

(1) Conditions of Release. If a defendant appeals, and a court grants a stay, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release and the factors determining the conditions of release, except as provided by this rule. The court must also take into consideration that the defendant may be compelled to serve the sentence imposed before the appellate court decides the case.

(2) Burden of Proof. If a defendant was sentenced to incarceration, a court must not grant release pending appeal from a judgment of conviction unless the defendant establishes to the court's satisfaction that:

(a) the appeal is not frivolous or taken for delay; and

(b) no substantial risk exists that the defendant:

(i) will fail to appear to answer the judgment following the conclusion of the appellate proceedings;

(ii) is likely to commit a serious crime, intimidate witnesses, or otherwise interfere with the administration of justice.

(3) Application for Release Pending Appeal. A defendant must first apply to the district court for release pending appeal. If the district court denies release pending appeal or imposes conditions of release, the court must state on the record the reasons for the action taken.

If the defendant appeals and has previously applied to the district court for release pending appeal, the defendant may file a motion for release, or for modification of the conditions of release, to the applicable appellate court or to a judge or justice of that court. The motion must be determined promptly upon such papers, affidavits, and portions of the record as the parties may present, and after reasonable notice to the prosecutor. The appellate court or one of its judges or justices may order the defendant's release pending the motion's disposition.

(4) Credit for Time Spent in Custody. All time the defendant spends in custody pending an appeal must be deducted from the sentence the district court imposed.

(5) When a defendant obtains release pending appeal under this rule, the prosecution must make reasonable good faith efforts as soon as possible to advise the victim of the defendant's release.

Subd. 8. Record on Appeal. The record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any.

In lieu of the record as defined by this rule, the parties may - within 60 days after filing of the notice of appeal - prepare, sign, and file with the court administrator a statement of the case showing how the issues presented by the appeal arose and how the district court decided them, stating only the claims and facts essential to a decision. The district court, after making any additions it considers necessary to present the issues raised by the appeal, may approve the statement, which will then be the record on appeal. Any recitation of the essential facts of the case, conclusions of law, and any relevant district court memorandum of law must be included with the record.

An appellant who intends to proceed on appeal with a statement of the case under this rule rather than by obtaining a transcript, or without either a statement of the case or transcript, must serve notice of intent to do so on respondent and the court administrator and also file the notice with the clerk of the appellate courts, all within the time provided for ordering a transcript.

Subd. 9. Transcript of Proceedings and Transmission of the Transcript and Record. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals, except that the transcript must be ordered within 30 days after filing of the notice of appeal and may be extended by the appellate court for good cause, and that the appellant must order an original and two copies of any transcript. The original transcript must be filed with the court administrator and a copy transmitted promptly to the attorney for each party. Upon the termination of the appeal, the clerk of the appellate courts must transmit the original transcript along with the remainder of the record to the court administrator.

If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made it part of the district court record, it becomes part of the record on appeal and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

If the appellant does not order the entire transcript, then within the 30 days permitted to order it, the appellant must file with the clerk of the appellate courts and serve on the court administrator and respondent a description of the parts of the transcript the appellant intends to include in the record, and a statement of the issues the appellant intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings necessary, the respondent must order from the reporter, within ten days of service of the description or notification of no transcript, those other parts deemed necessary, or serve and file a motion in the district court for an order requiring the appellant to do so.

Subd. 10. Briefs. The appellant must serve and file the appellant's brief within 60 days after the court reporter delivers the transcript, or after the filing of the district court's approval of the statement under subd. 8 of this rule or under Minn. R. Civ. App. P. 110.03. In all other cases, if the parties obtain the transcript before the appeal, or if the record on appeal does not include a transcript, the appellant must serve and file the appellant's brief within 60 days after the appellant filed the notice of appeal. The respondent must serve and file the respondent's brief within 45 days after service of the appellant's brief. The appellant may serve and file a reply brief within 15 days after service of the respondent's brief. In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but the appellant's brief must contain a procedural history.

Subd. 11. Scope of Review. On appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests of justice may require.

Subd. 12. Action on Appeal. If the appellate court affirms the judgment, it must direct execution of the sentence as pronounced by the district court or as modified by the appellate court under Rule 28.05, subd. 2. If it reverses the judgment, it must:

(a) direct a new trial;

(b) vacate the conviction and enter a judgment of acquittal; or

(c) reduce the conviction to a lesser included offense or to an offense of lesser degree, as the case may require. If the court reduces the conviction, it must remand for resentencing.

Subd. 13. Oral Argument.

(1) Oral argument must be held in every case if either party serves on adverse counsel and files with the clerk of the appellate courts a request for it when the party serves and files its initial brief, unless:

1. the respondent forfeits oral argument under Minn. R. Civ. App. P. 134.01(b) for failure to timely file a brief, and appellant has either waived oral argument or not requested it;

2. the parties waive oral argument by joint agreement under Minn. R. Civ. App. P. 134.06; or

3. the appellate court determines 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 must notify the parties when oral argument will not be allowed under this provision. Any party so notified may request the court to reconsider its decision by serving on all other parties and filing with the clerk of the appellate courts a written request for reconsideration within five days of receipt of the notification that no oral argument will be allowed. If, under this provision, the court does not allow oral argument, the case must be considered as submitted to the court when the clerk of the appellate courts notifies the parties that oral argument has been denied.

The Court of Appeals may direct presentation of oral argument in any case.

(2) Except in exigent circumstances, the oral argument must be heard by the full panel assigned to decide the case, and in any event must be considered and decided by the full panel. The procedure on oral argument, including waiver and forfeiture of oral argument, must be as prescribed by the Minnesota Rules of Civil Appellate Procedure, unless this rule directs otherwise.

(Amended effective September 1, 2011.)

[For text of 28.03, see M.S. 2010, Volume 15]

Rule 28.04 Appeal by Prosecutor

Subd. 1. Right of Appeal. The prosecutor may appeal as of right to the Court of Appeals:

(1) in any case, from any pretrial order, including probable cause dismissal orders based on questions of law. But a pretrial order cannot be appealed if the court dismissed a complaint for lack of probable cause premised solely on a factual determination, or if the court dismissed a complaint under Minnesota Statutes, section 631.21;

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

(3) in any case, from an order granting postconviction relief under Minnesota Statutes, chapter 590;

(4) in any case, from an order staying adjudication of an offense for which the defendant pleaded guilty or was found guilty at a trial. An order for a stay of adjudication to which the prosecutor did not object is not appealable;

(5) in any case, from a judgment of acquittal by the district court entered after the jury returns a verdict of guilty under Rule 26.03, subd. 18(2) or (3);

(6) in any case, from an order of the district court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 3;

(7) in any case, from an order for a new trial granted under Rule 26.04, subd. 1, after a verdict or judgment of guilty, if the district court expressly stated in its order or in an accompanying memorandum that it based its order exclusively on a question of law that, in the opinion of the district court, is so important or doubtful that the appellate court should decide it. However, an order for a new trial cannot be appealed if based on the interests of justice.

Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecutor is as follows:

(1) Stay. Upon oral notice that the prosecutor intends to appeal a pretrial order, the district court must stay the proceedings for five days to allow time to perfect the appeal.

The oral notice must include a statement for the record explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial.

(2) Notice of Appeal. The prosecutor must file with the clerk of the appellate courts:

(a) a notice of appeal;

(b) the statement of the case provided for by Minn. R. Civ. App. P. 133.03, which must also include a summary statement by the prosecutor explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial; and

(c) a copy of the written request to the court reporter for a transcript of the proceedings as appellant deems necessary.

The prosecutor must submit with the notice of appeal, the statement of the case, and request for transcript at the time of filing, proof of service of these documents on the defendant or defense counsel, the State Public Defender's office, the Minnesota Attorney General, and the court administrator.

Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service, does not deprive the Court of Appeals of jurisdiction over the prosecutor's appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal must be as set out in Rule 28.02, subd. 4(2).

(3) Briefs. The prosecutor must file the appellant's brief with the clerk of appellate courts, with proof of service on the respondent, within 15 days of delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request any transcript under Rule 28.04, subd. 2(2), appellant must file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent within 15 days after the prosecutor filed the notice of appeal.

Within eight days of service of appellant's brief upon respondent, the respondent must file the respondent's brief together with proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history.

(4) Dismissal by the Minnesota Attorney General. In appeals by the prosecutor, the attorney general may, within 20 days after entry of the order staying proceedings, dismiss the appeal, and must within three days after the dismissal give notice of it to the court administrator and file it with the clerk of the appellate courts. The district court must then proceed as if no appeal had been taken.

(5) Oral Argument and Consideration. Rule 28.02, subd. 13 concerning oral argument applies to appeals by the prosecutor, but the date of oral argument or submission of the case to the court without oral argument cannot be later than three months after all briefs have been filed. The Court of Appeals must not hear or accept as submitted any appeals not argued or submitted before this period elapsed. If the case has not been argued or submitted within three months, the district court must proceed as if no appeal had been taken.

(6) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on such appeal, and they must be paid by the governmental unit responsible for the prosecution.

(7) Joinder. The prosecutor may appeal several of the orders under this rule joined in a single appeal.

(8) Time for Appeal. The prosecutor may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and the district court has decided all issues raised.

The appeal then must be taken within five days after the defense, or the court administrator under Rule 33.03, serves notice of entry of the order to be appealed from on the prosecutor, or within five days after the district court notifies the prosecutor in court on the record of the order, whichever occurs first.

All pretrial orders entered and noticed to the prosecutor before the district court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or in the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal.

An appeal by the prosecutor under this rule bars any further appeal by the prosecutor from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecutor can be taken after jeopardy has attached.

An appeal under this rule does not deprive the district court of jurisdiction over pending matters not included in the appeal.

Subd. 3. Cross-Appeal by Defendant. When the prosecutor appeals, the defendant may obtain review of any adverse pretrial or postconviction order by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within ten days after the prosecutor serves notice of the appeal. In postconviction cases, the notice of cross-appeal may be filed within 60 days after the entry of the order granting or denying postconviction relief, if that is later.

Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the cross-appeal.

Subd. 4. Conditions of Release. Upon appeal by the prosecutor of a pretrial order, Rule 6.02, subds. 1 and 2 govern the conditions for defendant's release. The court must also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.

Subd. 5. Proceedings in Forma Pauperis. An indigent defendant who wants the services of an attorney in an appeal by the prosecutor under this rule must proceed under Rule 28.02, subd. 5.

Subd. 6. Procedure Upon Appeal of Postconviction Order.

(1) Service and Filing. The prosecutor may appeal an order granting postconviction relief by filing a notice of appeal with the clerk of the appellate courts, with proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

A certified copy of the order appealed and the statement of the case in Minn. R. Civ. App. P. 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal by the prosecutor of an order granting postconviction relief must be taken within 60 days after entry of the order.

(3) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order granting postconviction relief under this rule.

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;

(b) Rule 28.02, subd. 8: the record on appeal;

(c) Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript on record;

(d) Rule 28.02, subd. 10: briefs;

(e) Rule 28.02, subd. 13: oral argument;

(f) Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General;

(g) Rule 28.04, subd. 2(6): attorney fees; and

(h) Rule 28.06: voluntary dismissal.

Subd. 7. Procedure Upon Appeal From Order Staying Adjudication.

(1) Service and Filing. The prosecutor may appeal an order staying adjudication by filing a notice of appeal with the clerk of the appellate courts, with proof of service on opposing counsel, the court administrator, the State Public Defender's office, and the Minnesota Attorney General.

The notice must be accompanied by a copy of a written request to the court reporter for a transcript of the proceedings, as appellant deems necessary. No fees or bond for costs are required for the appeal.

A certified copy of the order to be appealed or the statement of the case in Minn. R. Civ. App. P. 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Taking an Appeal. An appeal by the prosecutor from an order staying adjudication must be taken within ten days after entry of the order.

(3) Briefs. The prosecutor must file and serve the appellant's brief and proof of service on the respondent with the clerk of the appellate courts within 15 days after delivery of the transcript.

If the court reporter delivered the transcript before the prosecutor filed the notice of appeal, or if the prosecutor did not request a transcript, the appellant must file the appellant's brief and proof of service on the respondent with the clerk of the appellate courts together within 15 days after the prosecutor filed the notice of appeal. The brief must identify itself as a stay of adjudication brief.

Within eight days after service of the appellant's brief, the respondent must file the respondent's brief and proof of service on the appellant. In all other respects, and to the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the form and filing of briefs and appendices, but the appellant's brief must contain a procedural history.

(4) Other Procedures. The following rules govern the below-listed aspects of prosecution appeals from an order staying adjudication:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;

(b) Rule 28.02, subd. 5: proceedings in forma pauperis;

(c) Rule 28.02, subd. 7: release of the defendant pending appeal;

(d) Rule 28.02, subd. 8: the record on appeal; and

(e) Rule 28.02, subd. 13: oral argument.

Subd. 8. Procedure Upon Appeal From Judgment of Acquittal or Vacation of Judgment After a Jury Verdict of Guilty, or From an Order Granting a New Trial.

(1) Service and Filing. The prosecutor may appeal these judgments or orders by filing with the clerk of the appellate courts a notice of appeal and proof of service on the opposing counsel, the court administrator, and the Minnesota Attorney General. No fees or bond for costs are required for the appeal.

A certified copy of the judgment or order appealed and the statement of the case in Minn. R. Civ. App. P. 133.03 need not be filed, unless the appellate court directs otherwise.

Failure of the prosecutor to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Court of Appeals deems appropriate, including dismissal of the appeal.

(2) Time for Appeal. An appeal by the prosecutor under this subdivision must be made within ten days after entry of the judgment or order.

(3) Stay and Conditions of Release. Upon oral notice that the prosecutor intends to appeal under this subdivision, the district court must order execution of the judgment or order stayed for ten days to allow time to perfect the appeal. The district court must also determine the conditions for defendant's release pending the appeal, which are governed by Rule 6.02, subds. 1 and 2.

(4) Other Procedures. The following rules govern the below-listed aspects of appeals by the prosecutor under this subdivision:

(a) Rule 28.02, subd. 4(2): the contents of the notice of appeal;

(b) Rule 28.02, subd. 8: the record on appeal;

(c) Rule 28.02, subd. 9: transcript of the proceedings and transmission of the transcript and record;

(d) Rule 28.02, subd. 10: briefs;

(e) Rule 28.02, subd. 13: oral argument;

(f) Rule 28.04, subd. 2(4): dismissal by the Minnesota Attorney General; and

(g) Rule 28.04, subd. 2(6): attorney fees.

(5) Cross-Appeals. When the prosecutor appeals under this subdivision, the defendant may obtain review of any adverse pretrial and trial orders and issues by filing a notice of cross-appeal with the clerk of the appellate courts, with proof of service on the prosecutor, within 30 days of the prosecutor filing notice of appeal, or within ten days after delivery of the transcript by the reporter, whichever is later.

If the defendant makes this election, and the jury's verdict is ultimately reinstated, the defendant may not file a second appeal from the entry of judgment of conviction unless it is limited to issues, such as sentencing, that could not have been raised in the cross-appeal.

The defendant may also elect to respond to the issues raised in the prosecutor's appeal and reserve appeal of any other issues until such time as the jury's verdict of guilty is reinstated. If reinstatement occurs, the defendant may appeal from the judgment using the procedures in Rule 28.02, subd. 2.

(Amended effective September 1, 2011.)

[For text of 28.05, see M.S. 2010, Volume 15]

28.06 Voluntary Dismissal

If the appellant files with the clerk of the appellate courts a notice of voluntary dismissal, with proof of service upon counsel for respondent, the appellate court may dismiss the appeal. If the appellant was the defendant in the district court, the notice must be signed by the appellant, as well as appellant's legal counsel, if the appellant is represented.

(Added effective September 1, 2011.)

[For text of Comment - Rule 28, see M.S. 2010, Volume 15]

Rule 29. Appeals to Supreme Court

[For text of 29.01 and 29.02, see M.S. 2010, Volume 15]

Rule 29.03 Procedure for Appeals by Defendant in First-Degree Murder Cases

Subd. 1. Service and Filing. A defendant appeals by filing a notice of appeal to the Supreme Court with the clerk of the appellate courts, with proof of service on the prosecutor, the Minnesota Attorney General, and the court administrator for the county in which the judgment appealed from is entered. The defendant does not have to post a bond to appeal. The defendant need not file a certified copy of the judgment or order appealed from, or the statement of the case in Minn. R. Civ. App. P. 133.03. The defendant's failure to take any step other than timely filing the notice of appeal does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

Subd. 2. Contents of Notice of Appeal. The notice of appeal must specify:

(a) the party or parties filing the appeal;

(b) the names, addresses, and telephone numbers of all counsel and whom they represent;

(c) the judgment or order from which appeal is taken; and

(d) that the appeal is to the Supreme Court.

Subd. 3. Time for Taking an Appeal.

(a) An appeal by a defendant from a final judgment of conviction of first-degree murder must be filed within 90 days after the final judgment. A judgment is final within the

meaning of these rules when there is a judgment of conviction upon the verdict of a jury, or the finding of the court, and sentence is imposed.

(b) A notice of appeal filed after the announcement of a decision or order - but before sentencing or entry of judgment or order - must be treated as occurring after these events, but on the same day.

(c) A timely motion to vacate the judgment, for a judgment of acquittal, or for a new trial tolls the time for an appeal from a final judgment until the entry of an order denying the motion, and the order denying the motion may be reviewed in an appeal from the final judgment.

(d) An appeal by a defendant from an adverse final order in a post-conviction proceeding in a first-degree murder case must be filed within 60 days after its entry.

(e) A judgment or order is entered under these appellate rules when the court administrator enters it in the record.

(f) For good cause, the district court or a justice of the Supreme Court may, before or after the time for appeal has expired, with or without motion or notice, extend the time for filing a notice of appeal up to 30 days from the expiration of the time prescribed by these rules.

Subd. 4. Other Procedures. The following rules govern the below-listed aspects of an appeal in a first-degree murder case:

(a) Rule 28.02, subd. 4(4): stay of appeal for post-conviction proceedings;

(b) Rule 28.02, subd. 5: proceeding in forma pauperis;

(c) Rule 28.02, subd. 6: stay;

(d) Rule 28.02, subd. 7: release of defendant;

(e) Rule 28.02, subd. 9: transcript of proceedings and transmission of the transcript and record;

(f) Rule 28.02, subd. 10: briefs;

(g) Rule 28.02, subd. 11: scope of review;

(h) Rule 28.02, subd. 12: action on appeal;

(i) Rule 28.06: voluntary dismissal; and

(j) Rule 29.04, subd. 9: oral argument.

(Amended effective September 1, 2011.)

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 must file four copies of a petition for review with the clerk of the appellate courts, with proof of service on opposing counsel and the Minnesota Attorney General. A defendant does not have to file a bond to petition for review.

A party's failure to take any step other than timely filing the petition for review does not affect the validity of the appeal, but permits action the Supreme Court deems appropriate, including dismissal of the appeal.

Subd. 2. Time for Petitioning. A party petitioning for review to the Supreme Court from the Court of Appeals must serve and file the petition for review within 30 days after the Court of Appeals files its decision.

For good cause, a judge of the Court of Appeals or a justice of the Supreme Court may, before or after the time to serve and file a petition for review has expired, with or without motion or notice, extend the time to do so up to 30 days from the expiration of the time prescribed by these rules.

Subd. 3. Contents of Petition for Review. The petition for review must not exceed ten pages, exclusive of the appendix, and must identify the petitioner, state that petitioner is seeking permission to appeal to the Supreme Court from the Court of Appeals, and contain in order the following information:

(1) the names, addresses, and telephone numbers of the attorneys for all parties;

(2) the date the Court of Appeals filed its decision, and a designation of the judgment or order from which petitioner had appealed to the Court of Appeals;

(3) a concise statement of the legal issue or issues presented for review, indicating how the district court and the Court of Appeals decided each issue;

(4) a procedural history of the case from commencement of prosecution through filing of the decision in the Court of Appeals, including a designation of the district court and district court judge, and the disposition of the case in the district court and in the Court of Appeals;

(5) a concise statement of facts indicating briefly the nature of the case, and including only the facts relevant to the issue(s) sought to be reviewed;

(6) a concise statement of the reasons why the Supreme Court should exercise its discretion to review the case; and

(7) an appendix containing a copy of the written decision of the Court of Appeals, and a copy of any district court recitation of the essential facts of the case, conclusions of law, and memoranda.

Subd. 4. Discretionary Review. The Supreme Court may exercise discretionary review of any Court of Appeals' decision. The following criteria may be considered:

(1) the decision presents an important question on which the Supreme Court should rule;

(2) the Court of Appeals has ruled on the constitutionality of a statute;

(3) the Court of Appeals has decided a question in direct conflict with an applicable precedent of a Minnesota appellate court;

(4) the lower courts have so far departed from the accepted and usual course of justice that the Supreme Court should exercise its supervisory powers; or

(5) a Supreme Court decision will help develop, clarify, or harmonize the law; and

(i) the case calls for the application of a new principle or policy;

(ii) the resolution of the question presented has possible statewide impact; or

(iii) the question will likely recur unless resolved by the Supreme Court.

Subd. 5. Response to Petition. When a petition for review has been filed, the respondent must file with the clerk of the appellate courts within 20 days after service of the petition on respondent four copies of any response, not to exceed ten pages exclusive of the appendix, and proof of service on appellant. Failing to respond to the petition will not be considered agreement with it.

Subd. 6. Cross-Petition. A party cross-petitioning for review to the Supreme Court must file with the clerk of the appellate courts within 20 days after service of the petition for review, or within 30 days after filing of the decision of the Court of Appeals, whichever is later, four copies of a cross-petition for review, not to exceed ten pages exclusive of the appendix, and proof of service on the petitioner. The cross-petition must conform to Rule 29.04, subd. 3, but the procedural history, statement of facts, and appendix need not be included unless the cross-petitioner disagrees with them as they appear in the petition for review.

The court may permit a party, without filing a cross-petition, to defend a decision or judgment on any ground that the law and record permit that would not expand the relief that has been granted to the party.

Subd. 7. Action on Petition or Cross-Petition. The Supreme Court must file its order granting or denying review or cross-review within 60 days from the date the petition was filed. Upon the filing of the order, the clerk of the appellate courts must mail a copy of it to the attorneys for the parties.

Subd. 8. Briefs.

(1) Except as subdivision 10 (pretrial appeals) of this rule directs:

(a) appellant must serve and file the appellant's brief and appendix within 30 days after entry of the order granting permission to appeal;

(b) respondent must serve and file the respondent's brief and appendix, if any, within 30 days after service of appellant's brief; and

(c) appellant may serve and file a reply brief within ten days after service of the respondent's brief.

(2) In all other respects, the Minnesota Rules of Civil Appellate Procedure govern, to the extent applicable, the form and filing of briefs, but appellant's brief must also contain a procedural history.

Subd. 9. Oral Argument. Each party must serve and file with the party's initial brief a notice stating whether the party requests oral argument. Oral argument must be granted unless the court determines it is unnecessary because:

(1) neither party has requested oral argument in the notice served and filed with the initial briefs;

(2) a party forfeits oral argument under Minn. R. Civ. App. P. 134.01 for not timely filing its brief; or

(3) the parties waive oral argument by joint agreement under Minn. R. Civ. App. P. 134.06.

The Supreme Court may direct presentation of oral argument in any case.

Subd. 10. Appeals Involving Pretrial Orders.

(1) Briefs. In cases originally appealed to the Court of Appeals by the prosecutor under Rule 28.04, the appellant must, within 15 days from the date of entry of the order granting review, serve the appellant's brief on respondent and file 14 copies with the clerk of the appellate courts.

Within eight days of service, respondent must serve the respondent's brief on appellant and file 14 copies with the clerk of appellate courts.

(2) Hearing. In pretrial appeals, the date of oral argument or submission of the case to the court without oral argument must not be later than three months after all briefs have been filed.

The Supreme Court must not hear or accept as submitted any pretrial appeal not argued or submitted within this three-month period. If the case has not been argued or submitted within three months, the district court must proceed under the judgment of the Court of Appeals as if no appeal had been taken to the Supreme Court.

(3) Attorney Fees. Reasonable attorney fees and costs incurred must be allowed to the defendant on an appeal to the Supreme Court by the prosecutor in a case originally appealed by the prosecutor to the Court of Appeals under Rule 28.04. The fees and costs must be paid by the governmental unit responsible for the prosecution.

(4) Conditions of Release. Upon an appeal to the Supreme Court in a case originally appealed by the prosecutor under Rule 28.04, Rule 6.02, subds. 1 and 2, govern the conditions for defendant's release pending the appeal.

Subd. 11. Other Procedures. The following rules govern the below-listed aspects of an appeal to the Supreme Court from the Court of Appeals:

(1) Rule 28.02, subd. 4(4): stay of appeal for post-conviction proceedings;

(2) Rule 28.02, subd. 5: proceeding in forma pauperis;

(3) Rule 28.02, subd. 6: stay;

(4) Rule 28.02, subd. 7: release of defendant;

(5) Rule 28.02, subd. 8: record on appeal;

(6) Rule 28.02, subd. 11: scope of review;

(7) Rules 28.02, subd. 12, and 28.05, subd. 2: action on appeal; and

(8) Rule 28.06: voluntary dismissal.

(Amended effective September 1, 2011.)

[For text of 29.05 and 29.06, see M.S. 2010, Volume 15]

Rule 33. Service and Filing of Papers

[For text of 33.01 to 33.03, see M.S. 2010, Volume 15]

Rule 33.04 Filing

(a) Search warrants and search warrant applications, affidavits, and inventories - including statements of unsuccessful execution - and papers required to be served must be filed with the court administrator. Papers must be filed as in civil actions, except that when papers are filed by facsimile transmission, a facsimile filing fee is not required and the originals of the papers described in Rule 33.05 must be filed as Rule 33.05 provides.

(b) Search warrants and related documents need not be filed until after execution of the search or the expiration of ten days, unless this rule directs otherwise.

(c) The prosecutor may request that a complaint, indictment, application, arrest warrant, search warrant, supporting affidavits, and any order granting the request not be filed.

(d) An order must be issued granting the request in whole or in part if, from affidavits, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that: (1) in the case of complaint, indictment, or arrest documents, filing may cause a potential arrestee to flee, hide, or otherwise prevent the execution of the warrant; or, (2) in the case of a search warrant application or affidavit, filing may cause the search or a related search to be unsuccessful, create a substantial risk of injury to an innocent person, or severely hamper an ongoing investigation.

(e) The order must further direct that on execution and return of an arrest warrant, the filing required by paragraph (a) must be complied with immediately. For a search warrant, following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting application or affidavit must be filed either immediately or at any other time as the court directs. Until such filing, the documents and materials ordered withheld from filing must be retained by the judge or the judge's designee.

(Amended effective September 1, 2011.)

Rule 33.05 Facsimile Transmission

Complaints, orders, summons, warrants, and supporting documents - including orders and warrants authorizing the interception of communications under Minnesota Statutes, chapter 626A - may be sent via facsimile transmission. Procedural and statutory requirements for the issuance of a warrant or order must be met, including the making of a record of the proceedings. A facsimile order or warrant issued by the court has the same force and effect as the original for procedural and statutory purposes. The original order or warrant,

along with any supporting documents and affidavits, must be delivered to the court administrator of the county in which the request or application was made. The original of any facsimile transmissions received by the court under this rule must be promptly filed.

(Amended effective September 1, 2011.)

[For text of Comment - Rule 33, see M.S. 2010, Volume 15]