

Minnesota Rules of Criminal Procedure

Revised effective January 1, 2010

With amendments effective July 1, 2015

TABLE OF HEADNOTES

Rule 1. Scope and Purpose of the Rules

- 1.04 Definitions
- 1.06 Use of Electronic Filing for Charging Documents

Rule 2. Complaint

- 2.01 Contents; Before Whom Made

Rule 3. Warrant or Summons Upon Complaint

- 3.01 Issuance
- 3.02 Contents of Warrant or Summons
- 3.03 Execution or Service of Warrant or Summons; Certification
- 3.04 Defective Warrant, Summons or Complaint

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

- 4.01 Arrest With a Warrant
- 4.02 Arrest Without a Warrant
- 4.03 Probable Cause Determination

Rule 5. Procedure on First Appearance

- 5.01 Purpose of First Appearance

Rule 6. Pretrial Release

- 6.01 Release on Citation

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

- 7.01 Notice of Omnibus Issues

Rule 9. Discovery in Felony, Gross Misdemeanor, and Misdemeanor Cases

- 9.03 Regulation of Discovery
- 9.04 Discovery in Misdemeanor Cases

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

- 10.01 Pleadings and Motions
- 10.03 Service of Motions; Hearing Date

Rule 11. The Omnibus Hearing

- 11.04 Omnibus Motions
- 11.07 Determination of Issues
- 11.09 Trial Date
- 11.10 Record

Rule 15. Guilty Plea Procedures

- 15.07 Plea to Lesser Offenses
- 15.08 Plea to Different Offense

Rule 17. Indictment, Complaint and Tab Charge

- 17.03 Joinder of Offenses and of Defendants
- 17.04 Surplusage
- 17.06 Motions Attacking the Charging Document

Rule 18. Grand Jury

18.05 Kind and Character of Evidence

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

19.03 Service of the Indictment

Rule 20. Mentally Ill or Mentally Deficient Defendants

20.01 Competency Proceedings

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

Rule 21. Depositions

21.01 When Taken

21.05 Transcription, Certification and Filing

Rule 22. Subpoena

22.01 For Attendance of Witnesses; For Documents

Rule 23. Petty Misdemeanors and Violations Bureaus

23.03 Violations Bureaus

23.05 Procedure in Petty Misdemeanor Cases

Rule 24. Venue

24.01 Place of Trial

24.02 Venue in Special Cases

24.03 Change of Venue

Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity

25.02 Continuance or Change of Venue

Rule 26. Trial

26.04 Post-Verdict Motions

Rule 27. Sentence and Judgment

27.03 Sentencing Proceedings

27.04 Probation Revocation

27.05 Pretrial Diversion

Rule 28. Appeals to Court of Appeals

28.02 Appeal by Defendant

28.03 Certification of Proceedings

28.04 Appeal by Prosecutor

28.05 Appeal from Sentence Imposed or Stayed

Rule 29. Appeals to Supreme Court

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

29.04 Procedure for Appeals from Court of Appeals

Rule 32. Motions

Rule 33. Service and Filing of Documents; Signature

33.01 Service; Where Required

33.02 Service; On Whom Made

33.03 Notice of Orders

33.04 Filing

33.05 Facsimile and Electronic Transmission

Rule 34. Time

- 34.01 Computation
- 34.03 For Motions; Affidavits; Statements under Penalty of Perjury
- 34.04 Additional Time After Service by Mail or Electronic Service Late in the Day

Rule 35. Courts and Court Administration**Rule 36. Search Warrants on Oral Testimony**

- 36.01 General Rule
- 36.02 When Request by Oral Testimony Appropriate
- 36.03 Application
- 36.04 Testimony Requirements
- 36.05 Issuance of Warrant
- 36.06 Filing
- 36.07 Contents of Warrant
- 36.08 Execution

TEXT OF RULES**Rule 1. Scope and Purpose of the Rules**

[For text of 1.01 to 1.03, see M.S. 2014, 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 charging document filed by an officer at a place of detention, or an amendment of the charges on the record by the prosecutor, 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, filed in paper form or by electronic means.

(f) Charging Document. A "charging document" is a complaint, indictment, citation, or tab charge.

(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; amended effective July 1, 2015.)

[For text of 1.05, see M.S. 2014, Volume 15]

Rule 1.06 Use of Electronic Filing for Charging Documents

Subd. 1. Definition of E-filing. "E-filing" for purposes of this rule means the electronic transmission of the charging document to the court administrator by means authorized by the State Court Administrator.

Subd. 2. Authorization. E-filing may be used to file with the court administrator in a criminal case any charging document. Effective July 1, 2015, in Cass, Clay, Cook, Dakota, Faribault, Hennepin, Kandiyohi, Lake, Morrison, Ramsey, and Washington Counties, e-filing must be used to file all complaints. Effective July 1, 2016, e-filing must be used to file all citations, tab charges, and complaints statewide.

Subd. 3. Signatures.

(1) How Made. If the charging document is e-filed, all signatures required under these rules must be affixed electronically. If the e-filing technology is unavailable, any individual required to sign the charging document may print the charging document and affix a manual signature. If the document is printed and manually signed, all subsequent signatures must be affixed manually, and the printed copy must be filed with the court.

(2) Signature Standard. Electronic signatures affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification. Other electronic signatures may be affixed by any electronic means.

(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.

Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law.

Subd. 5. Paper Submission. E-filed charging documents are in lieu of paper submissions. An e-filed charging document should not be transmitted to the court administrator by any other means. Paper submission is authorized in lieu of e-filing where the electronic means authorized by the State Court Administrator are unavailable to the submitting agency.

(Amended effective July 15, 2010; amended effective July 1, 2015.)

Comment - Rule 1

Beyond the procedures required by these rules, prosecutors, courts, and law enforcement agencies should also be aware of the rights of crime victims as provided in Minnesota Statutes, chapter 611A.

Rule 1.04(d) defines "aggravated sentence" for the purpose of the provisions in these rules governing the procedure that a sentencing court must follow to impose an upward sentencing departure in compliance with Blakely v. Washington, 542 U.S. 296, 301-305 (2004). On June 24, 2004, the United States Supreme Court decided in Blakely that an upward departure in sentencing under the State of Washington's determinate sentencing system violated the defendant's Sixth Amendment rights where the additional findings required to justify the departure were not made beyond a reasonable doubt by a jury. The definition is in accord with existing Minnesota case law holding that Blakely applies to upward departures under the Minnesota Sentencing Guidelines and under various sentencing enhancement statutes requiring additional factual findings. See, e.g., State v. Shattuck, (704 N.W.2d 131, 140-142 (Minn. 2005) (durational departures); State v. Allen, 706 N.W.2d 40, 44-47 (Minn. 2005) (dispositional departures); State v. Leake, 699 N.W.2d 312, 321-324 (Minn. 2005) (life sentence without release under Minnesota Statutes, section 609.106); State v. Barker, 705 N.W.2d 768, 771-773 (Minn. 2005) (firearm sentence enhancements under Minnesota Statutes, section 609.11); and State v. Henderson, 706 N.W.2d 758, 761-762 (Minn. 2005) (career offender sentence enhancements under Minnesota Statutes, section 609.1095, subdivision 4).

These Blakely-related protections and procedures do not apply retroactively to sentences that were imposed and were no longer subject to direct appeal by the time that Blakely was decided on June 24, 2004. State v. Houston, 702 N.W.2d 268, 773 (Minn. 2005). Also, the protections and procedures do not apply to sentencing departures and enhancements that are based solely on a defendant's criminal conviction history such as the assessment of a custody status point under the Minnesota Sentencing Guidelines. State v. Allen, 706 N.W.2d 40, 47-48 (Minn. 2005).

For aggravated sentence procedures related to Blakely, see Rule 7.03 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by complaint); Rule 9.01, subd. 1(7) (discovery of evidence relating to an aggravated sentence); Rule 11.04, subd. 2 (Omnibus Hearing decisions on aggravated sentence issues); Rule 15.01, subd. 2 and Appendices E and F (required questioning and written petition provisions concerning defendant's admission of facts supporting an aggravated sentence and accompanying waiver of rights); Rule 19.04, subd. 6 (notice of prosecutor's intent to seek an aggravated sentence in proceedings prosecuted by indictment); Rule 26.01, subd. 1(2)(b) (waiver of right to a jury trial determination of facts supporting an aggravated sentence); Rule 26.01, subd. 3 (stipulation of facts to support an aggravated sentence and accompanying waiver of rights); Rule 26.03, subd. 18(1) and (3) (motion that evidence submitted to jury was insufficient to support an aggravated sentence); Rule 26.03, subd. 19(7) (verdict forms); Rule 26.03, subd. 20(5) (polling the jury); and Rule 26.04, subd. 1 (new trial on aggravated sentence issue). The procedures provided in these rules for the determination of aggravated sentence issues supersede the procedures concerning those issues in Minnesota Statutes, section 244.10 (see Minnesota Laws 2005, chapter 136, article 16, sections 3 to 6) or other statutes.

Rule 1.05, subd. 8(3) and (4) clarify that when charges from multiple counties are consolidated into a single ITV proceeding, each prosecutor having authority to charge the offenses and each defense attorney representing the defendant for any of those offenses may choose to attend the hearing in person or by ITV or to waive appearance. But the provision in paragraph (4) permitting one defense attorney to represent the defendant on all pending charges is not intended to be invoked by the court when a defense attorney is simply delayed by a proceeding occurring in another courtroom. Rather, the decision to attend the hearing is individual to the attorney.

The signatures of the following persons must be affixed electronically when a complaint is e-filed pursuant to Rule 1.06:

- (1) the complainant, as required under Rule 2.01, subd. 1;*
- (2) the judge, court administrator, or notary public before whom a complaint is made upon oath, as required under Rule 2.01, subd. 2;*
- (3) the prosecutor, as required under Rule 2.02; and*
- (4) the judge, indicating a written finding of probable cause, as required under Rule 4.03, subd. 4.*

There are currently no signature requirements in the rules for citations or tab charges.

It is anticipated that if a complaint is commenced electronically, and the technology becomes unavailable due to a system failure, any actor in the chain (e.g., prosecutor or judge) may need to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint are valid so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2). It is also anticipated that certain complaints, including complaints filed by a prosecutor from a county other than the county of venue in a conflict case and complaints and charges filed by agencies without a federal Originating Agency Identification (ORI) number, must be filed on paper for the foreseeable future because the current e-filing system does not support electronic filing of those documents. The current e-filing system used for filing charging documents also does

not support the creation and filing of an indictment; however, if a criminal case has already been initiated by the filing of a complaint, an indictment may be filed into that case by the prosecutor using the E-Filing system defined in Minnesota General Rules of Practice 14.

Electronic Notarization, as required under Rule 1.06, subd. 4, is governed by Minnesota Statutes, chapters 358 and 359.

Rule 2. Complaint

Rule 2.01 Contents; Before Whom Made

Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, except as modified by Rules 6.01, subd. 4, 11.08, and 15.08. The probable cause statement can be supplemented by supporting affidavits, statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.

Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, except as otherwise provided in Rules 11.08 and 15.08, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. If sworn witness testimony is taken under subdivision 3, the oath must be administered by a judge, but the oath may be administered by telephone, ITV, or similar device.

Subd. 3. Witness Testimony; How Made. If the court takes sworn witness testimony, the court must note that fact on the complaint. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed.

Subd. 4. Probable Cause Determination. The judge must determine whether probable cause exists to believe an offense has been committed and the defendant committed it. When the alleged offense is punishable by a fine only, the probable cause determination can be made by the court administrator if authorized by court order.

(Amended effective July 1, 2015.)

[For text of 2.02, see M.S. 2014, Volume 15]

Comment - Rule 2

Rule 2.01 notes exceptions to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation. Rules 11.08 and 15.08, which authorize the substitution of a new complaint to permit a plea to a misdemeanor or different offense, do not require a showing of probable cause.

Even if affidavits, testimony, or other reports supplement the complaint, the complaint must still include a statement of the facts establishing probable cause. Under this rule, the complaint and any supporting affidavits can be sworn to before a court administrator or notary public, or signed under penalty of perjury pursuant to Minn. Stat., section 358.116. The documents can then be submitted to the judge or judicial officer by any method permitted under the rule and the law enforcement officer or other complainant need not personally appear before the judge. However, if sworn oral testimony is taken to supplement the complaint, it must be taken before the judge and cannot be taken before a court administrator or notary public.

The prosecutors referred to in Rule 2.02 are those authorized by law to prosecute the offense charged. See Minnesota Statutes, section 484.87 (allocating prosecutorial responsibilities amongst city, township, and county prosecutors); Minnesota Statutes, sections 8.01 and 8.03 (Attorney General); and Minnesota Statutes, section 388.051 (County Attorney).

Rule 2.02 does not define the remedy available when a local prosecutor refuses to approve a complaint.

Because the complaint is accessible to the public, and documents supporting the statement of probable cause can contain irrelevant material that is injurious to innocent third persons, as well as material prejudicial to the defendant's right to a fair trial, it is recommended that a statement be drafted containing the facts establishing probable cause, in or with the complaint, and that irrelevant material be omitted.

Rule 3. Warrant or Summons upon Complaint

Rule 3.01 Issuance

If the facts in the complaint and any supporting documents or supplemental sworn testimony establish probable cause to believe an offense has been committed and the defendant committed it, a summons or warrant must issue. A summons rather than a warrant must issue unless a substantial likelihood exists that the defendant will fail to respond to a summons, the defendant's location is not reasonably discoverable, or the defendant's arrest is necessary to prevent imminent harm to anyone. A warrant for the defendant's arrest must be issued to any person authorized by law to execute it.

The warrant or summons must be issued by a judge of the district court. If the offense is punishable by fine only, a court administrator may issue the summons when authorized by court order.

A summons must issue in lieu of a warrant if the offense is punishable by fine only in misdemeanor cases.

A judge must issue a summons whenever requested to do so by the prosecutor.

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

Rule 3.02 Contents of Warrant or Summons

Subd. 1. Warrant. The warrant must be signed by a judge and must contain the name of the defendant, or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It must describe the offense charged in the complaint. The warrant and complaint may be combined in one form. For all offenses, the amount of bail must be set, and other conditions of release may be set, by a judge and stated on the warrant.

Subd. 2. Directions of Warrant. The warrant must direct that the defendant be brought promptly before the court that issued the warrant if the court is in session.

If the court specified is not in session, the warrant must direct that the defendant be brought before the court without unnecessary delay, and not later than 36 hours after the arrest, exclusive of the day of arrest, or as soon as a judge is available.

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

Rule 3.03 Execution or Service of Warrant or Summons; Certification

Subd. 1. By Whom. The warrant must be executed by an officer authorized by law. The summons may be served by any officer authorized to serve a warrant, and if served by mail or electronic means, it may also be served by the court administrator.

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

Subd. 3. Manner. A warrant is executed by the defendant's arrest. If the offense charged is a misdemeanor, the defendant must not be arrested on Sunday or, on any other day of the week, between the hours of 10:00 p.m. and 8:00 a.m. except, when exigent circumstances exist, by direction of the judge, stated on the warrant. A misdemeanor warrant may also be executed at any time if the person is found on a public highway or street. The officer need not have the warrant in possession when the arrest occurs, but must inform the defendant of the warrant's existence and of the charge.

The summons must be served on an individual defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of abode with a person of suitable age and discretion residing there, or by mailing it to the defendant's last known address, or by serving it electronically as authorized by Rule 14 of the General Rules of Practice for the District Courts. A summons directed to a corporate defendant must be issued and served in the manner prescribed by law for service of summons on corporations in civil actions, or by mail addressed to the corporation at its principal place of business, or to an agent designated by the corporation to receive service of process.

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

On or before the date set for appearance, the officer to whom a summons was delivered for service must certify its service to the court before which the defendant was summoned to appear.

At the prosecutor's request, an unexecuted warrant or an unserved summons may be delivered by a judge to any authorized officer or person for execution or service.

Rule 3.04 Defective Warrant, Summons or Complaint

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

Subd. 2. Issuance of New Complaint, Warrant or Summons. Pretrial proceedings may be continued to permit a new complaint to be filed and a new warrant or summons issued if the prosecutor promptly moves for a continuance on the ground that:

(a) the initial complaint does not properly name or describe the defendant or the offense charged; or

(b) the evidence presented establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and the prosecutor intends to charge the defendant with that offense.

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

Subd. 3. Procedure upon Issuance of New Complaint. Upon the issuance of the new complaint, the court must inform the defendant of the charges; the defendant's rights, including the right to have counsel appointed if eligible; and the opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08. The court must also review conditions of release under Rule 6.02, subd. 2. Pretrial proceedings, including any prior waiver of rights, must be reopened to the extent required by the new complaint.

(Amended effective November 1, 2014; amended effective July 1, 2015.)

Comment - Rule 3

Rule 3.01 does not define probable cause for the purpose of obtaining a warrant of arrest or to prescribe the evidence that may be considered on that issue. These issues are determined by federal Fourth Amendment constitutional law. See e.g., State ex rel. Duhn v. Tahash, 275 Minn. 377, 147 N.W.2d 382 (1966); State v. Burch, 284 Minn. 300, 170 N.W.2d 543 (1969).

See Rule 4.02, subd. 5(3) for restrictions on the issuance of a warrant for an offense for which the prosecution has obtained a valid complaint after the time in which the court had ordered the complaint to be prepared.

Issuance of a warrant instead of a summons should not be grounds for objection to the arrest, to the jurisdiction of the court, or to any subsequent proceedings. In overcoming

the presumption for issuing a summons rather than a warrant, the prosecutor may, among other factors, cite to the nature and circumstances of the particular case, the past history of response to legal process and the defendant's criminal record. The remedy of a defendant who has been arrested by warrant is to request the imposition of conditions of release under Rule 6.02, subd. 1 upon the initial court appearance.

Minnesota law requires that the defendant be taken before the court "without unreasonable delay." See, e.g., Stromberg v. Hansen, 177 Minn. 307, 225 N.W. 148 (1929). See also Minnesota Statutes, section 629.401. Rule 3.02, subd. 2 imposes more definite time limitations while permitting a degree of flexibility. The first limitation (Rule 3.02, subd. 2) is that the defendant must be brought directly before the court if it is in session. The second limitation (Rule 3.02, subd. 2) is that if the court is not in session, the defendant must be taken before the nearest available judge of the issuing court without unnecessary delay, but not more than 36 hours after the arrest or as soon after the 36-hour period as a judge of the issuing court is available.

In computing the 36-hour time limit in Rule 3.02, subd. 2, the day of arrest is not counted. The 36 hours begin to run at midnight following the arrest. Also, Rule 34.01 expressly does not apply to Rule 3.02, subd. 2. Saturdays are to be counted in computing the 36-hour time limit under this rule. See also Rule 4.02, subd. 5.

The provisions of Rule 3.03, subd. 2 that a warrant may be executed or a summons served at any place within the State is in accord with existing law governing service of criminal process. The phrase "except where prohibited by law" was added to exclude those places, such as federal reservations, where state service of process may be prohibited by law.

For service of summons on corporations, Rule 3.03, subd. 3 adopts the method prescribed by law for service of process in civil actions. See Minn. R. Civ. P. 4.03(c).

Rule 4. Procedure upon Arrest With a Warrant Following a Complaint or Without a Warrant

Rule 4.01 Arrest With a Warrant

A defendant arrested with a warrant must be taken before a judge as directed in the warrant.

Rule 4.02 Arrest Without a Warrant

Following an arrest without a warrant:

Subd. 1. Release by Arresting Officer. If the arresting officer or the officer's superior determines that further detention is not justified, the arrested person must be immediately released.

Subd. 2. Citation or Tab Charge. The arresting officer or the officer's superior may issue a citation or tab charge and release the arrested person, and must release the arrested person if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred. The arresting officer or the officer's superior may issue a citation or tab charge and continue to detain the arrested person if any of the circumstances in Rule 6.01, subd. 1(a)(1)-(3) exist.

Subd. 3. Notice to Prosecutor. The arresting officer or the officer's superior must notify the prosecutor of the arrest as soon as practicable.

Subd. 4. Release by Prosecutor. The prosecutor may order the arrested person released from custody.

Subd. 5. Appearance Before Judge.

(1) **Before Whom and When.** An arrested person who is not released must be brought before the nearest available judge of the county where the alleged offense occurred. The defendant must be brought before a judge without unnecessary delay, and not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as

soon as a judge is available. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, subd. 1.

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting documents or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released, the complaint and any supporting documents must not be filed, and no record made of the proceedings.

(3) Complaint, Tab Charge, or Citation; Misdemeanors; Designated Gross Misdemeanors. If no complaint is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross misdemeanor charge for offenses designated under Rule 1.04(b), a citation or tab charge must be filed. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge or citation, the complaint must be served and filed within 48 hours of the defendant's appearance if the defendant is in custody, or within ten days of the appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged, and the complaint and any supporting documents must not be filed.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting documents or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

Rule 4.03 Probable Cause Determination

Subd. 1. Time Limit. When a person arrested without a warrant is not released under this rule or Rule 6, a judge must make a probable cause determination without unnecessary delay, and in any event within 48 hours from the time of the arrest, including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or does not make a determination as to probable cause within the time provided by this rule, the person must be released immediately.

Subd. 2. Application and Record. The facts establishing probable cause to believe that an offense has been committed, and that the person arrested committed it, must be submitted under oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The oath may be administered by the court administrator or notary public for any facts submitted in writing. If oral testimony is taken, the oath

must be administered by a judge, but it may be administered by telephone, ITV, or similar device. Any oral testimony must be recorded by reporter or recording instrument and must be retained by the court or by the judge's designee.

The person requesting a probable cause determination must advise the reviewing judge of any prior request for a probable cause determination on this same incident, or of any prior release of the arrested person on this same incident, for failure to obtain a probable cause determination within the time limit as provided by this rule.

Subd. 3. Prosecutor. No request for determination of probable cause may proceed without the approval of the prosecutor authorized to prosecute the matter, or by affirmation of the applicant that the applicant contacted the prosecutor and the prosecutor approved the request, or unless the judge reviewing probable cause certifies in writing that the prosecutor is unavailable and the determination of probable cause should not be delayed. A complaint complying with Rule 2, approved by the court, satisfies the probable cause requirement of this rule.

Subd. 4. Determination. If the information presented satisfies the court that probable cause exists to believe that an offense has been committed and the person arrested committed it, the court may set bail or other conditions of release, or release the arrested person without bail, under Rule 6. If probable cause is not found, the arrested person must be released immediately. The court's finding of probable cause must be in writing, and must indicate the offense, whether oral testimony was received, and the amount of any bail or other conditions of release the court may set. A written notice of the court's determination must be provided promptly to the arrested person.

(Amended effective July 1, 2015.)

Comment - Rule 4

It is anticipated that complaints will be requested by defendants in only a small percentage of misdemeanor cases because discovery is permitted under Rule 9.04, and most defendants will not wish to make an additional appearance to receive the complaint.

Where a charge has been dismissed by the court for failure of the prosecutor to file a valid, timely complaint (Rule 4.02, subd. 5(3)) as required, and the prosecutor subsequently files a valid complaint, a summons must issue instead of a warrant. If it is impossible to locate the defendant to serve the summons or if the defendant fails to respond to the summons, a warrant may be issued. See also Rule 3.01. This restriction is necessary because it is unfair to subject a defendant to a possibly unnecessary arrest when the defendant has appeared in court once to answer the minor charge, and, through no fault of the defendant, a complaint was not issued.

Rule 4.03 is based upon the constitutional requirement as set forth in County of Riverside v. McLaughlin, 500 U.S. 44 (1991) for a prompt judicial determination of probable cause following a warrantless arrest. Pursuant to that case and Rule 4.03, subd. 1, the determination must occur without unreasonable delay and in no event later than 48 hours after the arrest. There are no exclusions in computing the 48-hour time limit. Rule 6.01 provides for the mandatory and permissive issuance of citations and an arrested person released on citation prior to the 48-hour time limit need not receive a probable cause determination pursuant to Rule 4.03.

Under Rule 4.03, subd. 2 the facts submitted to the court to establish probable cause may be either by written affidavit, under penalty of perjury, or sworn oral testimony. See Form 44, Application for Judicial Determination of Probable Cause to Detain, following these rules.

Rule 4.03, subd. 4, sets out the elements to be included in the court's written determination of probable cause. See Form 45, Judicial Determination of Probable Cause to Detain, following these rules.

Rule 5. Procedure on First Appearance**Rule 5.01 Purpose of First Appearance**

- (a) The purpose of the first appearance is for the court to inform the defendant of the:
 - (1) charge(s);
 - (2) defendant's rights, including the right to have counsel appointed if eligible; and
 - (3) opportunity to enter a plea as permitted by Rules 5.06, 5.07, and 5.08.
 - (b) The court must first determine whether a defendant is disabled in communication as defined in Rule 5.02.
 - (c) The court must ensure the defendant has a copy of the charging document.
 - (d) The court must set bail and other conditions of release under Rule 6.02.
 - (e) On the prosecutor's motion, the court must require that the defendant be booked, photographed, and fingerprinted.
- (Amended effective July 1, 2015.)

[For text of 5.02 to 5.09, see M.S. 2014, Volume 15]

[For text of Comment - Rule 5, see M.S. 2014, 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 and the person must be released, unless any of the circumstances in subdivision 1(a)(1)-(3) above exist. If any of the circumstances in subd. 1(a)(1)-(3) above exist, the officer may issue a citation or tab charge and detain the person until the appearance before a judge under Rule 4.02, subdivision 5(3), or until bail is posted pursuant to the district court bail process or schedule.

(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 and release the person unless it reasonably appears to the officer that any of the circumstances in subdivision 1(a)(1)-(3) exist. If any of the circumstances in subd. 1(a)(1)-(3) above exist, a citation or tab charge may be issued and the person may be detained until the appearance before a judge under Rule 4.02, subdivision 5(3), or until bail is posted pursuant to the district court bail process or schedule.

(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 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; amended effective July 1, 2015.)

[For text of 6.02 to 6.06, see M.S. 2014, Volume 15]

[For text of Comment - Rule 6, see M.S. 2014, Volume 15]

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

Rule 7.01 Notice of Omnibus Issues

(a) In any case where a right to jury trial exists, the prosecutor must notify the defendant or defense counsel of:

- (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping;
- (2) any confessions, admissions, or statements in the nature of confessions made by the defendant;

(3) any evidence against the defendant discovered as a result of confessions, admissions, or statements in the nature of confessions made by the defendant; or

(4) any evidence of lineups, show-ups, or other procedures used to identify the defendant or any other person.

(b) In felony and gross misdemeanor cases, notice must be given in writing on or before the date set for the defendant's initial appearance in the district court under Rule 5.05.

(c) In misdemeanor cases, notice must be given either in writing or orally on the record in court on or before the date set for the defendant's pretrial conference, if one is scheduled, or seven days before trial if no pretrial conference is held.

(d) Written notice may be served:

(1) personally on the defendant or defense counsel;

(2) by ordinary mail sent to the defendant's last known mailing address or left at this address with a person of suitable age and discretion residing there;

(3) by ordinary mail sent to defense counsel's business address or left at this address with a person of suitable age and discretion working there; or

(4) by electronic means as authorized or required by Rule 14 of the General Rules of Practice for the District Courts.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

[For text of 7.02 to 7.04, see M.S. 2014, Volume 15]

Comment - Rule 7

Under Rule 7.01 the Rasmussen notice (State ex rel. Rasmussen v. Tahash, 272 Minn. 539, 553-54, 141 N.W.2d 3, 13 (1965)) of evidence obtained from the defendant and of identification procedures must be given on or before the defendant's appearance in the district court under Rule 8 (within 14 days after the first appearance in the court under Rule 5) so that the defendant may determine at the time of the Rule 8 appearance whether to waive or demand a Rasmussen hearing (Rule 8.03). If the defendant then demands a Rasmussen hearing, it will be included in the Omnibus Hearing (Rule 11) no more than 28 days later. It is permissible for the prosecutor to attach to a complaint for service a notice under Rule 7.01 or a discovery request under Rule 9.02.

In misdemeanor cases under Rule 7.01, the Rasmussen notice of evidence obtained from the defendant and of identification procedures may be given at arraignment, and in such a case the waiver or demand of a hearing takes place at that time (Rule 5.06, subd. 4). However, since misdemeanor arraignments are often within one day or even a few hours of an arrest, a prosecutor may not have sufficient knowledge of the case to issue a Rasmussen notice at that time. Rather than discourage such prompt arraignments, this rule provides that the Rasmussen notice may be served as late as the pretrial conference, if held, or at least seven days before trial if no pretrial conference is held. The Rasmussen notice procedure is required only where a jury trial is to be held. Even where no notice is required, the discovery permitted by Rule 9.04 will give the defendant and defense counsel notice of any evidentiary or identification issues that would have been the subject of a formal Rasmussen notice.

If the notice required by Rule 7.01 is not actually received, the court may grant a continuance to prevent any prejudice due to surprise.

Rule 7.02 requires that the Spreigl notice be given on or before the date of the Omnibus Hearing (Rule 11) in order that any issues that may arise as to the admissibility of the evidence of these offenses at trial may be ascertained and determined at the Omnibus Hearing. If the prosecutor learns of any such offenses after the Omnibus Hearing, the prosecutor must immediately give notice to the defendant.

Rule 7.03 establishes the notice requirements for a prosecutor to initiate proceedings seeking an aggravated sentence in compliance with Blakely v. Washington, 542 U.S. 296,

301-305 (2004). See Rule 1.04(d) as to the definition of "aggravated sentence." See also the comments to that rule. The written notice required by Rule 7.03 must include not only the grounds or statute relied upon, but also a summary statement of the supporting factual basis. However, there is no requirement that the factual basis be given under oath. This rule balances the competing interests of the parties: the prosecution may not have sufficient evidence at charging to make the Blakely decision and the defense requires notice as early as possible to prepare an adequate defense. The rule recognizes that it may not always be possible to give notice by seven days before the Omnibus Hearing and the court may permit a later notice for good cause so long as the later notice will not unfairly prejudice the defendant. In making that decision the court can consider whether a continuance of the proceedings or other conditions would cure any unfair prejudice to the defendant. Pretrial issues concerning a requested aggravated sentence will be considered and decided under the Omnibus Hearing provisions of Rule 11.

Rule 7.04 provides that discovery required under Rule 9 in felony and gross misdemeanor cases must be completed by the prosecution and defense before the Omnibus Hearing (Rule 11). This will permit the court to resolve any issues that may have arisen between the parties with respect to discovery (Rule 9.03, subd. 8) at the Omnibus Hearing. It may also result in a plea of guilty at the Omnibus Hearing (Rule 11.08). All notices under Rule 7 must also be filed with the court (Rule 33.04). The discovery requirements for misdemeanor cases are set forth in Rule 9.04.

Rule 9. Discovery in Felony, Gross Misdemeanor, and Misdemeanor Cases

[For text of 9.01 and 9.02, see M.S. 2014, Volume 15]

Rule 9.03 Regulation of Discovery

Subd. 1. Investigations Not to be Impeded. Counsel for the parties and other prosecution or defense personnel must not tell anyone with relevant information (except the accused) not to discuss the case with opposing counsel, or not to show opposing counsel relevant material, or otherwise impede opposing counsel's investigation of the case.

This rule does not apply to matters not subject to discovery under this rule or that are covered by a protective order.

Subd. 2. Timely Disclosure and Continuing Duty to Disclose.

(a) All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.

(b) If, after compliance with any discovery rules or orders, a party discovers additional material, information, or witnesses subject to disclosure, that party must promptly notify the other party of what it has discovered and disclose it.

(c) Each party has a continuing duty of disclosure before and during trial.

Subd. 3. Time, Place, and Manner of Discovery and Inspection. A court granting discovery must specify the time, place, and manner of discovery, and may impose reasonable terms and conditions.

Subd. 4. Custody of Materials. Materials furnished to a party under discovery rules or orders must remain in the party's custody and be used by the party only to conduct that attorney's side of the case, and may be subject to other conditions the court orders.

Subd. 5. Protective Orders. The court may order disclosures restricted, deferred, or made subject to other conditions.

Subd. 6. In Camera Proceedings. On any party's motion, with notice to the other parties, the court for good cause may order a discovery motion to be made in camera. A record must be made. If the court orders an in camera hearing, the entire record of the motion must be sealed and preserved in the court's records, and be available to reviewing courts. Any materials submitted to the court for in camera review must be submitted in accordance with Rule 14.06 of the General Rules of Practice for the District Courts.

Subd. 7. Excision. When parts of materials are discoverable under these rules and other parts are not, the discoverable portions must be disclosed. Material excised under judicial order must be sealed and be made available to reviewing courts.

Subd. 8. Sanctions. If a party fails to comply with a discovery rule or order, the court may, on notice and motion, order the party to permit the discovery, grant a continuance, or enter any order it deems just in the circumstances. Any person who willfully disobeys a court's discovery order may be held in contempt.

Subd. 9. Filing. Unless the court directs otherwise, discovery disclosures made under Rule 9 are not subject to the filing requirements in Rule 33.04. The party making disclosures must prepare an itemized descriptive list identifying the disclosures but without disclosing their contents, and must file the list as provided by Rule 33.04.

Subd. 10. Reproduction. When an obligation exists to permit reproduction of a report, statement, document, or other tangible thing discoverable under this rule, it may be satisfied by any method that provides an exact reproduction, including any electronic means available to both parties.

(Amended effective July 1, 2015.)

Rule 9.04 Discovery in Misdemeanor Cases

In misdemeanor cases, before arraignment or at any time before trial the prosecutor must, on request and without a court order, permit the defendant or defense counsel to inspect the police investigatory reports.

Upon request, the prosecutor must also disclose any material or information within the prosecutor's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

After arraignment and on request, the defendant or defense counsel must be provided a copy of the police investigatory reports.

Any other discovery must be by consent of the parties or by motion to the court.

The obligation to provide discovery after arraignment may be satisfied by any method that provides the defendant or defense counsel a copy of the reports, including any electronic means available to both parties.

(Amended effective February 11, 2010; amended effective July 1, 2015.)

[For text of 9.05, see M.S. 2014, Volume 15]

[For text of Comment - Rule 9, see M.S. 2014, Volume 15]

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

Rule 10.01 Pleadings and Motions

Subd. 1. Pleadings. The pleadings consist of the charging document and any plea permitted by Rule 14.

Subd. 2. Motions; Waiver. Defenses, objections, issues, or requests that can be determined without trial on the merits must be made before trial by a motion to dismiss or to grant appropriate relief. The motion must include all defenses, objections, issues, and requests then available. Failure to include any of them in the motion constitutes waiver, but lack of jurisdiction over the offense or failure of the indictment or complaint to charge an offense can be noticed by the court at any time during the proceeding.

The court can grant relief from the waiver for good cause. The defendant does not waive any defenses or objections by including them in a motion with other defenses, objections, or issues.

(Amended effective July 1, 2015.)

[For text of 10.02, see M.S. 2014, Volume 15]

Rule 10.03 Service of Motions; Hearing Date

Subd. 1. Service. In felony and gross misdemeanor cases, motions must be made in writing and served upon opposing counsel no later than three days before the Omnibus Hearing unless the court for good cause permits the motion to be made and served later.

In misdemeanor cases, except as permitted in subdivision 2, motions must be made in writing and served - along with any supporting documents - on opposing counsel at least three days before the hearing and no more than 30 days after the arraignment unless the court for good cause permits the motion to be made and served later.

Subd. 2. Hearing Date. In felony and gross misdemeanor cases, unless the motion is served after the Omnibus Hearing, it must be heard at that hearing and determined as provided in Rule 11.07.

In misdemeanor cases, if a pretrial conference is held, the motion must be heard then unless the court directs otherwise for the purpose of hearing witnesses, or for other good cause. If the motion is not heard at a pretrial conference, it must be heard before trial, unless the court - upon agreement by the prosecutor and defense attorney - hears and determines the motion at arraignment. If the court hears the motion at the arraignment, it need not be in writing, but a record must be made of the proceedings, and witnesses can be called in the court's discretion. The motion must be determined before trial as provided in Rule 12.07.

Subd. 3. Discovery. A party intending to call witnesses at a motion hearing must disclose them at least three days before the hearing and must comply with Rule 9 as if the witnesses were to be called at the trial.

(Amended effective July 1, 2015.)

Comment - Rule 10

Rule 10 does not require pretrial motions to be made before a plea is entered.

As a general rule, under Rule 10.02 no challenge to the court's personal jurisdiction can be made in a misdemeanor case until after a complaint has been filed. Therefore, a defendant must first demand a complaint under Rule 4.02, subd. 5(3) before raising the jurisdictional challenge. If no complaint is issued, the charge must be dismissed under Rule 4.02, subd. 5(3). If a complaint is issued, it will often make any possible challenge moot, since a valid complaint would give the court jurisdiction even if the arrest was illegal. See City of St. Paul v. Webb, 256 Minn. 210, 97 N.W.2d 638 (1959). Once the complaint is issued, the jurisdictional challenge becomes a sufficiency of the complaint question.

If the defendant's motion to dismiss is denied, Rule 17.06, subd. 4(1) provides that the defendant can continue to raise the jurisdictional issue on direct appeal if convicted after a trial. This procedure avoids the necessity of seeking review by an extraordinary writ that oftentimes would delay a trial otherwise ready to proceed.

Rule 17.06, subd. 4 describes the effect of determining a motion to dismiss under this rule.

In misdemeanor cases, Rule 10.03, subd. 2 provides an alternative method to dispose of a motion to dismiss - including a motion to dismiss for want of personal jurisdiction - at the time of arraignment. When there is no dispute over the facts, and the law can be quickly and adequately argued, this alternative procedure can provide an immediate disposition and avoid the delay and expense of further court appearances.

Rule 11. The Omnibus Hearing

[For text of 11.01 to 11.03, see M.S. 2014, Volume 15]

Rule 11.04 Omnibus Motions**Subd. 1. Probable Cause Motions.**

(a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) The prosecutor and defendant may offer evidence at the probable cause hearing.

(c) The court may find probable cause based on the complaint or the entire record, including reliable hearsay. Evidence considered on the issue of probable cause is subject to the requirements of Rule 18.05, subd. 1.

Subd. 2. Aggravated Sentence Motion.

(a) If the prosecutor gave notice under Rule 7.03 or 19.04, subd. 6 of intent to seek an aggravated sentence, the court must determine whether the law and proffered evidence support an aggravated sentence. The court must also determine whether to conduct a unitary or bifurcated trial.

(b) In deciding whether to bifurcate, the court must determine whether the evidence supporting an aggravated sentence is otherwise admissible in the guilt phase of trial and whether a unitary trial would unfairly prejudice the defendant. The court must order a bifurcated trial if the evidence supporting an aggravated sentence includes evidence otherwise inadmissible at the guilt phase of the trial or if that evidence would unfairly prejudice the defendant in the guilt phase.

(c) If the court orders a unitary trial, the court may order separate final arguments on the issues of guilt and the aggravated sentence.

(Amended effective July 1, 2015.)

[For text of 11.05 and 11.06, see M.S. 2014, Volume 15]

Rule 11.07 Determination of Issues

The court must make findings and determinations on the omnibus issue(s) in writing or on the record within 30 days of the issue(s) being taken under advisement.

(Amended effective July 1, 2015.)

[For text of 11.08, see M.S. 2014, Volume 15]

Rule 11.09 Trial Date

(a) If the defendant enters a plea other than guilty, a trial date must be set.

(b) A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date.

Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

(Amended effective July 1, 2015.)

Rule 11.10 Record

Subd. 1. Record. A verbatim record must be made.

Subd. 2. Transcript. When a party has timely requested a transcript of the proceedings from the court reporter, it must be provided on the following conditions:

(a) If the defendant has ordered the transcript, the cost must be prepaid unless the public defender or assigned counsel represents the defendant, or the defendant makes a sufficient showing of inability to pay or secure the costs and the court orders that the defendant be supplied with the transcript at the expense of the appropriate governmental unit.

(b) The transcript must be provided to the prosecutor without prepayment.

(c) Transcripts provided to counsel must be filed with the court.

(d) A party offering video or audio evidence may also provide a transcript of the exhibit, which becomes part of the record.

Subd. 3. Documents and Exhibits. All documents and exhibits must be filed with the court administrator. On motion, any exhibit may be returned to the offering party.

(Amended effective July 1, 2015.)

[For text of Comment - Rule 11, see M.S. 2014, Volume 15]

Rule 15. Guilty Plea Procedures

[For text of 15.01 to 15.06, see M.S. 2014, Volume 15]

Rule 15.07 Plea to Lesser Offenses

With the prosecutor's consent and the court's approval, the defendant may plead guilty to a lesser included offense or to an offense of lesser degree. On the defendant's motion and after hearing, the court, without the prosecutor's consent, may accept a guilty plea to a lesser included offense or to an offense of lesser degree, provided the court is satisfied that the prosecutor cannot introduce sufficient evidence to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the charging document. However, in felony cases, if the indictment or complaint is not amended, the reduction of the charge to an included offense or an offense of lesser degree must be done on the record. If done only on the record, the proceedings must be transcribed and filed.

(Amended effective July 1, 2015.)

Rule 15.08 Plea to Different Offense

With the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original charging document. If the different offense is a felony or gross misdemeanor, a new complaint must be signed by the prosecutor and filed in the district court. The complaint must be in the form prescribed by Rule 2.01 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the defendant may be charged with the new offense by complaint, or on the record, and the original charge must be dismissed.

(Amended effective July 1, 2015.)

[For text of 15.09 to 15.11, see M.S. 2014, Volume 15]

[For text of Comment - Rule 15, see M.S. 2014, Volume 15]

[For text of Appendix, see M.S. 2014, Volume 15]

Rule 17. Indictment, Complaint and Tab Charge

[For text of 17.01 and 17.02, see M.S. 2014, Volume 15]

Rule 17.03 Joinder of Offenses and of Defendants

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

Subd. 2. Joinder of Defendants. When two or more defendants are charged with the same offense, they may be tried separately or jointly at the court's discretion. To determine whether to order joinder or separate trials, the court must consider:

- (1) the nature of the offense charged;
- (2) the impact on the victim;
- (3) the potential prejudice to the defendant; and

- (4) the interests of justice.

In all cases any one or more of the defendants may be convicted or acquitted.

Subd. 3. Severance of Offenses or Defendants.

(1) Severance of Offenses. On motion of the prosecutor or the defendant, the court must sever offenses or charges if:

- (a) the offenses or charges are not related;
- (b) before trial, the court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense or charge; or
- (c) during trial, with the defendant's consent or on a finding of manifest necessity, the court determines severance is necessary to fairly determine the defendant's guilt or innocence of each offense or charge.

(2) Severance from Codefendant because of Codefendant's Out-of-Court Statement. On a defendant's motion for severance from a codefendant because a codefendant's out-of-court statement refers to but is not admissible against the defendant, the court must determine whether the prosecutor intends to offer the statement as evidence during its case in chief. If so, the court must require the prosecutor to elect one of the following options:

- (a) a joint trial at which the statement is not received in evidence;
- (b) a joint trial at which the statement is only received in evidence after all references to the defendant have been deleted, if the statement's admission with the deletions will not prejudice the defendant; or
- (c) the defendant's severance.

(3) Severance of Defendants During Trial. The court must sever defendants during trial, with the defendant's consent or on a finding of manifest necessity, if the court determines severance is necessary to fairly determine the guilt or innocence of one or more of the defendants.

Subd. 4. Consolidation of Charging Documents for Trial.

(a) The court, on the prosecutor's motion, or on its initiative, may order two or more charging documents to be tried together if the offenses and the defendants could have been joined in a single charging document.

(b) On a defendant's motion, the court may order two or more charging documents to be tried together even if the offenses and the defendants could not have been joined in a single charging document.

(c) In all cases, the procedure will be the same as if the prosecution were under a single charging document.

Subd. 5. Dual Representation. When two or more defendants are jointly charged or will be tried jointly under subdivision 2 or 4 of this rule, and two or more of them are represented by the same attorney, the following procedure must be followed before plea and trial.

- (1) The court must:

- (a) address each defendant personally on the record;
- (b) advise each defendant of the potential danger of dual representation; and
- (c) give each defendant an opportunity to question the court on the complexities and possible consequences of dual representation.

(2) The court must elicit from each defendant in a narrative statement that the defendant:

- (a) has been advised of the right to effective representation;

(b) understands the details of defense counsel's possible conflict of interest and the potential perils of such a conflict;

(c) has discussed the matter with defense counsel, or if the defendant wishes, with outside counsel; and

(d) voluntarily waives the constitutional right to separate counsel.

(Amended effective July 1, 2015.)

Rule 17.04 Surplusage

The court on motion may strike surplusage from the charging document.

(Amended effective July 1, 2015.)

[For text of 17.05, see M.S. 2014, Volume 15]

Rule 17.06 Motions Attacking the Charging Document

Subd. 1. Defects in Form. No charging document will be dismissed nor will the trial, judgment, or other proceedings be affected by reason of a defect or imperfection in matters of form that does not prejudice the defendant's substantial rights.

Subd. 2. Motion to Dismiss or for Appropriate Relief. All objections to the charging document must be made by motion under Rule 10.01, subd. 2 and may be based on the following grounds without limit:

(1) With regard to an indictment:

(a) The evidence admissible before the grand jury was not sufficient to establish an offense charged or any lesser or other included offense;

(b) The grand jury was illegally constituted;

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

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

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

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

(2) With regard to any charging document:

(a) The charging document does not substantially comply with the requirements prescribed by law to the prejudice of the defendant's substantial rights;

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

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

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

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

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

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

(h) Double jeopardy, collateral estoppel, or that prosecution is barred by Minnesota Statutes, section 609.035.

Subd. 3. Time for Motion. A motion to dismiss the charging document must be made within the time prescribed by Rule 10.03, subd. 1. At any time during the pendency of a

proceeding an objection may be made to the court's jurisdiction over the offense or that the charging document fails to charge an offense.

Subd. 4. Effect of Determining Motion to Dismiss.

(1) Motion Denied. If the court denies a motion to dismiss the charging document, the defendant must be permitted to plead if the defendant has not previously entered a plea. A plea previously entered will stand. In all cases, the defendant may continue to raise the issues on appeal if convicted after a trial.

(2) Grounds for Dismissal. When the court grants a motion to dismiss a charging document for a defect in the institution of prosecution or in the charging document, the court must specify the grounds on which the motion is granted.

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

In misdemeanor cases, if the defendant is unable to post any bail that may be required under Rule 6.02, subd. 1, the defendant must be released subject to such non-monetary conditions as the court deems appropriate. The specified time for such amended or new indictment or complaint must not exceed 60 days for filing a new indictment or seven days for amending an indictment or complaint or for filing a new complaint. During the seven-day period for making the motion and during the time specified by the order, if such motion is made, the indictment or complaint's dismissal must be stayed. If the prosecutor does not make the motion within the seven-day period or if the indictment or complaint is not amended or if a new indictment or complaint is not filed within the time specified, the defendant must be discharged and further prosecution for the same offense is barred unless the prosecutor has appealed as provided by law, or the defendant is charged with murder and the court has granted a motion to dismiss on the ground of the insufficiency of the evidence before the grand jury. In misdemeanor and designated gross misdemeanor cases (as defined in Rule 1.04(a)-(b)) dismissed for failure to file a timely complaint within the time limits as provided by Rule 4.02 subd. 5(3), further prosecution will not be barred unless the court has so ordered.

(Amended effective July 1, 2015.)

Comment - Rule 17

The complaint under Rule 2.01 and the indictment under Rule 17.02, subd. 2 must contain a written statement of the essential facts constituting the offense charged. The statement of the evidence, supporting affidavits, or sworn testimony, showing probable cause required by Rule 2.01 are not a part of the indictment.

The required legal content of the complaint and indictment is set forth in Rules 2.01 and 17.02, and serves the function of informing the court of the offense(s) charged and the facts establishing probable cause. In addition to this legal information, the court requires administrative information to identify the defendant and the case, as well as additional factual information about the defendant or the status of the defendant's case to fulfill the court's statutory obligations to provide such information to other agencies. There is no requirement that the complaint or indictment be submitted to the court in any particular form or format. Rule 17.02, subd. 4 requires the State Court Administrator to identify and publish the administrative content of the complaint or indictment required by the courts. A sample complaint/indictment and a listing of the administrative content approved by the State Court Administrator will be published on the Minnesota Judicial Branch website. This flexibility will allow for e-filing of the complaint or indictment.

Except to the extent that existing statutes (Minnesota Statutes, sections 628.10, 628.12, 628.13, 628.15 to 628.18, 628.20 to 628.24, and 628.27) that govern the contents of an indictment or information are inconsistent with Rule 17.02, they are not abrogated by these rules. So, to the extent they are consistent with the provisions of Rule 17.02, they may be followed in drawing complaints and indictments under these rules.

Rule 17.02, subd. 3 permits counts to be used but prohibits duplication by charging more than one offense in a single count.

Rule 17.03, subd. 5 sets forth procedures for representing two or more defendants who are jointly charged or tried, as set forth in State v. Olsen, 258 N.W.2d 898 (Minn. 1977). That case requires defendants to clearly and unequivocally waive their constitutional right to separate counsel. If a record is not made as required or if the record fails to show that the procedures were followed in every important respect, State v. Olsen, supra, places the burden on the prosecutor to establish beyond a reasonable doubt that a prejudicial conflict of interest did not exist.

Rule 17.05 leaves district courts to determine whether the defendant will be substantially prejudiced by an amendment and what steps, if any, including a continuance, may be taken to remove any prejudice that might otherwise result from an amendment. Rule 17.05 does not govern a complaint's amendment after a mistrial and before the start of the second trial. Rather, Rule 3.04, subd. 2, which provides for the free amendment of the complaint, controls. State v. Alexander, 290 N.W.2d 745 (Minn. 1980).

Grounds for a motion for dismissal of an indictment only and for a motion for dismissal of an indictment or complaint are set forth in Rule 17.06, subd. 2(1) and (2). These grounds are not intended to be exclusive.

Rule 17.06, subd 2(1)(a) is available because Rule 18.04, subd. 1 requires a record to be made of the evidence taken before the grand jury. (See also the provisions of Rule 18.04, subd. 1 for the conditions in which the record may be disclosed to the defendant. And see also Rule 18.05, subd. 2.) Upon such a motion, the admissibility and sufficiency of evidence pertaining to indictments is governed by Rules 18.05, subd. 1, and 18.05, subd. 2.

Rule 17.06, subd. 2(2)(f) leaves to judicial decision the constitutional or other requirements of a speedy trial as well as the effect of denying a defendant's demand for trial under Rules 11.08 and 11.09 and Rule 6.06.

By Rule 10.03, subd. 1, a motion to dismiss an indictment or complaint must be served no later than three days before the Omnibus Hearing under Rule 11 unless the time is extended for good cause. In misdemeanor cases, by Rule 17.06, subd. 3, a motion to dismiss must be served at least three days before the pretrial conference or, at least three days before the trial if no pretrial conference is held, unless this time is extended for good cause.

The first sentence of Rule 17.06, subd. 4 contemplates that a defendant may plead not guilty and also make a motion to dismiss if the defendant wishes.

To make the basis for dismissal based on a defect in the institution of the prosecution or in the indictment or complaint apparent, Rule 17.06, subd. 4 requires the court to specify the grounds for granting the motion. Under Rule 17.06, subd. 4(3), if the dismissal is for failure to file a timely complaint as required by Rule 4.02, subd. 5(3) for misdemeanor cases, or for designated gross misdemeanor cases as defined in Rule 1.04(b), or for a defect which could be cured by a new complaint, the prosecutor may within seven days after notice of entry of the order dismissing the case move to continue the case for the purpose of filing a new complaint. On such a motion, the court must continue the case for no more than seven days pending the filing of a new complaint, or amending of the complaint or indictment, or for 60 days pending the filing of a new indictment. This filing requirement for a new or amended complaint is not satisfied until the complaint is signed by the judge or other appropriate issuing officer and then filed with the court administrator.

During the time for such a motion and during any continuance, dismissal of the charge is stayed. In a misdemeanor case, the defendant must not be kept in custody. Rule 17.06,

subd. 4(3), does not govern dismissals for defects that could not be cured at the time of dismissal by a new or amended complaint or indictment. Therefore, when a complaint or indictment has been dismissed because of insufficient evidence to establish probable cause, the prosecutor may re-prosecute if further evidence is later discovered to establish probable cause. Also under Rule 4.02, subd. 5(3), even if prosecution is reinstituted within the specified period after having been dismissed for failure to file a timely complaint, a summons rather than a warrant must be issued to secure the defendant's appearance in court.

Rule 18. Grand Jury

[For text of 18.01 to 18.04, see M.S. 2014, Volume 15]

Rule 18.05 Kind and Character of Evidence

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

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

(2) A report by a physician, chemist, firearms identification expert, examiner of questioned documents, fingerprint technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison, or test performed by the person in connection with the investigation of the case against the defendant, when certified by the person as the person's report.

(3) Unauthenticated copies of official records if authenticated copies will be available at trial.

(4) Written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of the persons who claim to have title or an interest in property to prove ownership or that the property was obtained without the owner's consent, and written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of these persons or of experts to prove the value of the property, if admissible evidence to prove ownership, value, or nonconsent is available and will be presented at the trial.

(5) Written statements under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, of witnesses who for reasons of ill health, or for other valid reasons, are unable to testify in person if the witnesses, or otherwise admissible evidence, will be available at the trial to prove the facts contained in the statements.

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

Subd. 2. Evidence Warranting Finding of Indictment. The grand jury may find an indictment if the evidence establishes probable cause to believe an offense has been committed and the defendant committed it. Reception of inadmissible evidence does not provide grounds for dismissing the indictment if sufficient admissible evidence exists to support the indictment.

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

(Amended effective July 1, 2015.)

[For text of 18.06 to 18.09, see M.S. 2014, Volume 15]

[For text of Comment - Rule 18, see M.S. 2014, Volume 15]

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

[For text of 19.01 and 19.02, see M.S. 2014, Volume 15]

Rule 19.03 Service of the Indictment

Subd. 1. By Whom. Any officer authorized by law may execute the warrant, and if authorized may also serve the summons. The court administrator may serve the summons in any manner authorized by subdivision 3 of this rule.

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

Subd. 3. Manner. The warrant must be executed or the summons served as specified in Rule 3.03, subd. 3.

Subd. 4. Certification. The execution of a warrant or the service of a summons must be certified as specified in Rule 3.03, subd. 4.

Subd. 5. Unexecuted Warrants. At the prosecutor's request made during the pendency of the indictment, a warrant returned unexecuted or a summons returned unserved, or a duplicate of either, may be delivered to any authorized officer or person for execution or service.

(Amended effective July 1, 2015.)

[For text of 19.04 to 19.06, see M.S. 2014, Volume 15]

[For text of Comment - Rule 19, see M.S. 2014, Volume 15]

Rule 20. Mentally Ill or Mentally Deficient Defendants**Rule 20.01 Competency Proceedings**

Subd. 1. Waiver of Counsel in Competency Proceedings. A defendant must not be allowed to waive counsel if the defendant lacks ability to:

- (a) knowingly, voluntarily, and intelligently waive the right to counsel;
- (b) appreciate the consequences of proceeding without counsel;
- (c) comprehend the nature of the charge;
- (d) comprehend the nature of the proceedings;
- (e) comprehend the possible punishment; or

(f) comprehend any other matters essential to understanding the case. The court must not proceed under this rule before a lawyer consults with the defendant and has an opportunity to be heard.

Subd. 2. Competency to Participate in the Proceedings. A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant lacks ability to:

- (a) rationally consult with counsel; or

(b) understand the proceedings or participate in the defense due to mental illness or deficiency.

Subd. 3. Competency Motion. If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue. The defendant's consent is not required. The motion must provide supporting facts, but must not include communications between the defendant and defense counsel if disclosure would violate the attorney-client privilege. By bringing the motion, defense counsel does not waive the attorney-client privilege. If the court determines that reason exists to doubt the defendant's competency, the court must suspend the criminal proceedings and proceed as follows.

- (a) In misdemeanor cases, the court must:

- (1) proceed under this rule as in felony or gross misdemeanor cases;

- (2) begin civil commitment proceedings; or
- (3) dismiss the case, unless dismissal would be contrary to the public interest.

(b) In felony or gross misdemeanor cases, the court must, on motion, determine probable cause. If probable cause exists, the court must order an examination of the defendant's mental condition. If no probable cause exists, the charges must be dismissed.

Subd. 4. Examination and Report.

(a) Medical Examination. The court must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition.

If the defendant is entitled to release, and the examination can be done on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the examination a condition of release. If the defendant is not entitled to release or the examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. Any examiner may obtain and review the report of any prior examination under this rule.

The court must order that if any examiner appointed to examine the defendant concludes that the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention, the examiner must promptly notify the prosecutor, defense counsel, and the court.

(b) Report of Examination. The court-appointed examiner must forward a written report to the court. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report must not be otherwise disclosed until the competency hearing. The report must include:

- (1) A diagnosis of the defendant's mental condition.
- (2) If the defendant is mentally ill or deficient, an opinion as to:
 - (a) the defendant's capacity to understand the proceedings or participate in the defense;
 - (b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;
 - (c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;
 - (d) whether a substantial probability exists that the defendant will ever attain competency to proceed;
 - (e) the estimated time required to attain competency to proceed; and
 - (f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.
- (3) The factual basis for the diagnosis and opinions.
- (4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or deficiency.

Subd. 5. Competency Determination.

(a) Request for Hearing. The court must hold a hearing if a party files written objections to the competency report within ten days after receipt.

(b) **Hearing Process.** The party that requested the competency hearing must present evidence first. If the court requested the competency report, the prosecutor must present evidence first unless the court otherwise orders.

(c) **Evidence.** Evidence of the defendant's mental condition may be admitted, including the court-appointed examiner's report. The court-appointed examiner or any person designated by the examiner as a source of information for preparation of the report other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined by any party.

(d) **Defense Counsel as Witness.** Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the attorney-client privilege. Testifying does not automatically disqualify defense counsel from continuing to represent the defendant. The court may inquire of defense counsel regarding the attorney-client relationship and the defendant's ability to communicate with counsel. The court must not require counsel to divulge communications protected by the attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning responses to the court's inquiry.

(e) **Determination Without Hearing.** If no party timely filed objections and the court did not hold a competency hearing, the court may determine the defendant's competency on the examiner's report.

(f) **Burden of Proof and Decision.** If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.

Subd. 6. Procedure After Competency Proceedings.

(a) **Finding of Competency.** If the court finds the defendant competent, the criminal proceedings must resume.

(b) **Finding of Incompetency.** If the court finds the defendant incompetent, and the charge is a misdemeanor, the charge must be dismissed. If the court finds the defendant incompetent, and the charge is a felony or gross misdemeanor, the proceedings must be suspended except as provided in Rule 20.01, subd. 8.

(1) **Finding of Mental Illness.** If the court finds the defendant mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under commitment, the court must commence a civil commitment proceeding. The court must supervise the commitment as provided in Rule 20.01, subd. 7.

(2) **Finding of Mental Deficiency.** If the court finds the defendant mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of human services, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under commitment, the court must cause civil commitment proceedings to be instituted against the defendant. The court must supervise the commitment as provided in Rule 20.01, subd. 7.

(3) **Appeal.** Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in the court. A verbatim record must be made in all civil commitment proceedings instituted under this rule.

Subd. 7. Continuing Supervision. The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, the person charged with the defendant's supervision, must report to the court periodically, not less than once every six months, on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. Reports must be furnished to the prosecutor and defense counsel.

The prosecutor, defense counsel, the defendant, or the person charged with the defendant's supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. If the court finds the defendant competent to proceed, the criminal proceedings must resume. The court and the prosecutor must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

Subd. 8. Dismissal of Criminal Charge.

(1) Felonies. Except when the defendant is charged with murder, the criminal charges must be dismissed three years after the date of finding the defendant incompetent to proceed unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant regains competency.

(2) Gross Misdemeanors. The criminal charges must be dismissed 30 days after the date of finding the defendant incompetent to proceed unless before that date the prosecutor files a written notice of intent to prosecute when the defendant regains competency. If a notice has been filed, the charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted.

Subd. 9. Issues Not Requiring Defendant's Participation. The defendant's incompetence does not preclude defense counsel from making an objection or defense before trial that can be fairly determined without the defendant's participation.

Subd. 10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible at the competency proceeding.

Subd. 11. Credit for Confinement. If the defendant is convicted, any time spent confined to a hospital or other facility for a mental examination under this rule must be credited as time served.

(Amended effective July 1, 2015.)

[For text of 20.02, see M.S. 2014, Volume 15]

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

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or deficiency, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or deficiency defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under subdivision 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or deficiency when it is the sole defense, or during the mental illness or deficiency phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

(Amended effective July 1, 2015.)

[For text of 20.04, see M.S. 2014, Volume 15]

[For text of Comment - Rule 20, see M.S. 2014, Volume 15]

Rule 21. Depositions**Rule 21.01 When Taken**

The court may order that the testimony of a witness be taken by oral deposition before any person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:

- (a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1;
- (b) a charging document has been filed; and
- (c) the requesting party has filed a motion and provided notice of the motion to the parties.

The order must also direct the defendant's presence at the deposition, and if the defendant is disabled in communication, direct the presence of a qualified interpreter.

[For text of 21.02 to 21.04, see M.S. 2014, Volume 15]

Rule 21.05 Transcription, Certification and Filing

When the testimony is transcribed, the person who took the deposition must certify that the witness was duly sworn and that the deposition is a verbatim record of the witness's testimony. The person must then secure the deposition, noting the title of the case and "Deposition of (here insert name of witness)." The person must promptly file the deposition under seal with the court. The deposition must not be unsealed or disclosed except by court order.

On a party's request, documents and other things produced during the examination of a witness, or copies of them, must be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by any party.

If the person producing the exhibits requests their return, the person taking the deposition must mark them, and, after giving each party an opportunity to inspect and copy them, return the exhibits to the parties producing them. The exhibits may then be used as if annexed to the deposition.

(Amended effective July 1, 2015)

[For text of 21.06 to 21.08, see M.S. 2014, Volume 15]

[For text of Comment - Rule 21, see M.S. 2014, 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.

(c) A subpoena requiring the production of privileged or confidential records about a victim as defined in Minnesota Statutes, section 611A.01, paragraph (b), may be served on a third party only by court order. A motion for an order must comply with Rule 10.03, subdivision 1. Before entering the order, the court may require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

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; amended effective March 1, 2015.)

[For text of 22.02 to 22.06, see M.S. 2014, Volume 15]

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.

The addition of paragraph (c) to Rule 22.01, subd. 2, is to formalize the process as set forth in State v. Paradee, 403 N.W.2d 640 (Minn. 1987); and State v. Hummel, 483 N.W.2d 68 (Minn. 1992).

Rule 23. Petty Misdemeanors and Violations Bureaus

[For text of 23.01 and 23.02, see M.S. 2014, 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 Statute and Administrative Rule Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for petty misdemeanors and for misdemeanors as it selects. The uniform fine schedule is applicable statewide, and is known as the Statewide Payables List.

(2) Ordinance Fine Schedules. Each district court may establish, under a process approved by the Judicial Council, a fine for any ordinance that may be paid in lieu of a court appearance by the defendant.

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; amended effective August 1, 2012; amended effective November 1, 2014.)

[For text of 23.04, see M.S. 2014, Volume 15]

Rule 23.05 Procedure in Petty Misdemeanor Cases

Subd. 1. No Right to Jury Trial. No right to a jury trial exists in a misdemeanor charge certified as a petty misdemeanor under Rule 23.04.

Subd. 2. Right to Public Defender Representation. Upon certification of a misdemeanor as a petty misdemeanor, the defendant is not entitled to representation by the public defender. In cases that require the defendant's consent to certification, and the prosecutor moves for certification, the judge must advise an unrepresented defendant of the right to apply for a public defender.

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

Subd. 4. Failure to Appear. If a defendant charged with a petty misdemeanor, or a misdemeanor on the Statewide Payables List that is certified as a petty misdemeanor, fails to appear or respond as directed on the citation, complaint, or by the court, a guilty plea and conviction may be entered, the payable fine amount no greater than the maximum fine for a petty misdemeanor, and any applicable fees and surcharges, may be imposed, and the matter referred to collections. Conviction must not be entered until 10 days after the failure to appear.

Subd. 5. Withdrawal of Plea. A defendant convicted under subdivision 4 may move under Rule 15.05 to withdraw the guilty plea and vacate the conviction.

(Amended effective August 1, 2012; amended effective February 1, 2013; amended effective July 1, 2015.)

[For text of 23.06, see M.S. 2014, Volume 15]

Comment - Rule 23

The definition of petty misdemeanor as used in Rule 23 is broader than the definition provided by Minnesota Statutes, section 609.02, subdivision 4a, which refers to a statutory violation punishable only by a fine of not more than the specified amount. Under Rule 23.01, read in conjunction with the definition of "misdemeanor" in Rule 1.04(a), the term "petty misdemeanor" refers also to violations of local ordinances, charter provisions, rules, or regulations.

These rules do not specify any procedures or sanctions for enforcing payment of fines in petty misdemeanor cases. Existing law permits some enforcement methods. The court may delay acceptance of a plea until the defendant has the money to pay the fine. If a defendant is unable to pay a fine when imposed, the court may set a date by which the defendant must either pay the fine or reappear in court. If the fine is not paid by the date set and the defendant does not reappear as ordered to explain why it has not been paid, the court may issue a bench warrant for the defendant's arrest and set bail in the amount of the fine. Any bail collected could then be used under Minnesota Statutes, section 629.53, to pay the fine. Contempt procedures under Minnesota Statutes, chapter 588, can also be used to enforce payment of a fine when the defendant has willfully refused payment. An administrative sanction may exist if the defendant has failed to pay a fine imposed upon conviction of violating a law regulating the operation or parking of motor vehicles. In such cases, the commissioner of public safety is required under Minnesota Statutes, section 171.16, subdivision 3,

to suspend the defendant's license for 30 days or until the fine is paid if the court determines that the defendant has the ability to pay the unpaid fine. Similar sanctions for non-traffic offenses might prove effective, but would require legislative action.

Rule 23.02, which deems a conviction a petty misdemeanor if the sentence imposed is within petty misdemeanor limits, is similar to Minnesota Statutes, section 609.13, which provides for the reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor.

For uniformity in fines imposed for certain misdemeanors throughout the state, see Minnesota Statutes, section 609.101, subdivision 4.

The written advice required by Rule 23.03, subd. 3 may be included upon the citation issued for the offense. This citation may be set forth in the form of an envelope for mailing the fine to the bureau. This rule does not require a defendant to sign a written plea of guilty.

See also Rule 5.04 as to appointment of counsel upon request of the defendant or interested counsel when the prosecution is for a misdemeanor not punishable by incarceration.

Contrary to what Rule 23.04 provides, Minnesota Statutes, section 609.131, enacted by the legislature in Minnesota Laws 1987, chapter 329, section 6, purports to allow the reduction of any misdemeanor to a petty misdemeanor without the defendant's consent. The Advisory Committee is aware of this statute, but after consideration rejected fully conforming the Rule to the statute. On these matters of procedure, the Rules of Criminal Procedure take precedence over statutes to the extent any inconsistency exists. State v. Keith, 325 N.W.2d 641 (Minn. 1982).

Rule 24. Venue

Rule 24.01 Place of Trial

The case must be tried in the county where the offense was committed unless these rules direct otherwise.

Rule 24.02 Venue in Special Cases

Subd. 1. Offense Committed on a Conveyance. When an offense occurs within the state on a conveyance, and doubt exists as to where the offense occurred, the case may be prosecuted in any county through which the conveyance traveled in the course of the trip during which the offense was committed.

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

Subd. 3. Injury or Death in One County from an Act Committed in Another County. If a person commits an act in one county causing injury or death in another county, the offense may be prosecuted in either county. If doubt exists as to where the act, injury, or death occurred, the offense may be prosecuted in any of the counties.

Subd. 4. Prosecution in County Where Injury or Death Occurs. If a person commits an act either within or outside the limits of the state and injury or death results, the offense may be prosecuted in the county of this state where the injury or death occurs, or where the body of the deceased is found.

Subd. 5. Prosecution When Death Occurs Outside State. If a person commits an assault in this state resulting in death outside the state, the homicide may be prosecuted in the county where the assault occurred.

Subd. 6. Kidnapping. Kidnapping may be prosecuted in any county through which the person kidnapped was taken or kept while under confinement or restraint.

Subd. 7. Libel. Publication of a libel contained in a newspaper published in the state may be prosecuted in any county where the paper was published or circulated. A person

cannot be prosecuted for publication of the same libel against the same person in more than one county.

Subd. 8. Bringing Stolen Goods Into State. Whoever brings stolen property into the state in violation of Minnesota Statutes, section 609.525, may be prosecuted in any county into or through which the property was brought.

Subd. 9. Obscene or Harassing Telephone Calls; Wireless or Electronic Communication. Violations of Minnesota Statutes, section 609.79, may be prosecuted at the place where the call is made or where it is received or, in the case of wireless or electronic communication, where the sender or receiver resides.

Subd. 10. Fair Campaign Practices. Violations of Minnesota Statutes, section 211B.15, prohibiting corporate contributions to political campaigns may be prosecuted in the county where the payment or contribution was made, where services were rendered, or where money was paid or distributed.

Subd. 11. Series of Offenses Aggregated. When a series of offenses is aggregated under Minnesota Statutes, section 609.52, subdivision 3, clause (5), and the offenses have been committed in more than one county, the case may be prosecuted in any county in which one or more of the offenses occurred.

Subd. 12. Non-Support of Spouse or Child. Violations of Minnesota Statutes, section 609.375, for non-support of spouse or child may be prosecuted in the county in which the person obligated to pay or entitled to receive support resides, or where the child resides.

Subd. 13. Refusal to Submit to Chemical Test Crime. Violations of Minnesota Statutes, section 169A.20, subdivision 2, for refusal to submit to a chemical test may be prosecuted in the jurisdiction where the arresting officer observed the defendant driving, operating, or in the control of the motor vehicle, or in the jurisdiction where the refusal occurred.

Subd. 14. Contributing to Need for Protection or Services for a Child. Violations of Minnesota Statutes, section 260C.425, for contributing to need for protection or services for a child, may be prosecuted in the county where the child is found, resides, or where the alleged act occurred.

Subd. 15. Criminal Tax Penalties. If a person commits violations of Minnesota Statutes, section 289A.63, in more than one county, the person may be prosecuted for all of the violations in any county in which one of the violations occurred.

Subd. 16. Municipalities in More than One County. Offenses occurring within a municipality located in more than one county or district must be prosecuted in the county where the municipality's city hall is located, unless the municipality designates by ordinance some other county or district in which part of the municipality is located.

Subd. 17. Depriving Another of Custodial or Parental Rights. Violations of Minnesota Statutes, section 609.26, for depriving another of custodial or parental rights may be prosecuted in the county in which the child was taken, concealed, or detained, or the county of lawful residence of the child.

Subd. 18. Child Abuse. A criminal action arising out of an incident of alleged child abuse may be prosecuted in the county where the alleged abuse occurred or the county where the child is found.

Subd. 19. Perjury. Violations of Minnesota Statutes, section 609.48, based on a statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, may be prosecuted in the county where the statement was signed, or the county of the district court in which the statement was filed.

(Amended effective July 1, 2015.)

Rule 24.03 Change of Venue

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

- a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;
- b. For the convenience of parties and witnesses;
- c. In the interests of justice;
- d. As provided by Rule 25.02 governing prejudicial publicity.

Subd. 2. County to Which Transferred. For the purposes of change of venue under this rule the district referred to in Minnesota Constitution, article I, section 6 is the area within the geographical boundaries of the State of Minnesota.

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

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

(Amended effective July 1, 2015.)

Comment - Rule 24

By Rule 11.01, Omnibus Hearings may be held in any county in the district court's judicial district in which the offense was committed. Objections to the place of trial are waived unless asserted before commencement of the trial.

Rule 24.02, subd. 16 (Municipalities in More Than One County) is derived from Minnesota Statutes, section 484.80.

Rule 24.02, subd. 18 (Child Abuse) is derived from Minnesota Statutes, section 627.15.

Rule 24.03, subd. 1 (Grounds for Change of Venue) permits a change of venue upon motion of the defendant or prosecution, or on the court's initiative upon any of the grounds specified in the rule.

Minnesota Constitution, article I, section 6, provides that the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law. Under Rule 24.03, subd. 2 (County to Which Transferred), change of venue may be ordered upon any of the specified grounds to any county of the state.

Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity

[For text of 25.01, see M.S. 2014, Volume 15]

Rule 25.02 Continuance or Change of Venue

This rule governs a motion for continuance or change of venue because of prejudicial publicity.

Subd. 1. How Obtained. A continuance or change of venue may be granted on motion of any party or on the court's initiative.

Subd. 2. Methods of Proof. The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:

- (a) Testimony, affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, from individuals in the community;

- (b) Qualified public opinion surveys; or
- (c) Other material having probative value.

Testimony, affidavits, or written statements from individuals in the community must not be required as a condition for granting the motion.

Subd. 3. Standards for Granting the Motion. A motion for continuance or change of venue must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown.

Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion must be determined before the jury is sworn. A motion for reconsideration of a prior denial may be granted even after a jury has been sworn.

Subd. 5. Limitations; Waiver. The court may grant more than one change of venue. The waiver of a jury or the failure to exercise all available peremptory challenges does not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.

(Amended effective July 1, 2015)

[For text of 25.03, see M.S. 2014, Volume 15]

[For text of Comment - Rule 25, see M.S. 2014, Volume 15]

Rule 26. Trial

[For text of 26.01 to 26.03, see M.S. 2014, Volume 15]

Rule 26.04 Post-Verdict Motions

Subd. 1. New Trial On Defendant's Motion.

(1) Grounds. The court may - on written motion of a defendant - grant a new trial on the issue of guilt or the existence of facts to support an aggravated sentence, or both, on any of the following grounds:

1. The interests of justice;
2. Irregularity in the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial;
3. Prosecutorial or jury misconduct;
4. Accident or surprise that could not have been prevented by ordinary prudence;
5. Newly discovered material evidence, which with reasonable diligence could not have been found and produced at the trial;
6. Errors of law at trial, and objected to at the time unless no objection is required by these rules;
7. A verdict or finding of guilty that is not justified by the evidence, or is contrary to law.

(2) Basis of Motion. A motion for new trial must be based on the record. Pertinent facts that are not in the record may be submitted by affidavit, or statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, except as otherwise provided by these rules. A full or partial transcript or other verbatim recording of the testimony taken at trial may be used during the motion hearing.

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

(4) Time for Serving Supporting Documents. If a motion for a new trial is based on affidavits or signed statements, the documents must be served with the notice of motion. The opposing party will then have ten days to serve supporting documents. The ten-day period may be extended by the court for good cause. The court may permit reply documents.

Subd. 2. New Trial on Court's Initiative. The court may - on its own initiative and with the consent of the defendant - order a new trial on any of the grounds specified in subdivision 1(1) within 15 days after a verdict or finding of guilty.

Subd. 3. Motion to Vacate Judgment. The court must - on motion of a defendant - vacate judgment, if entered, and dismiss the case if the charging document does not charge an offense, or if the court did not have jurisdiction over the offense charged. The motion must be made within 15 days after a verdict or finding of guilty, after a plea of guilty, or within a time set by the court during the 15-day period. If the motion is granted, the court must make written findings specifying its reasons for vacating the judgment and dismissing the case.

(Amended effective July 1, 2015)

[For text of Comment - Rule 26, see M.S. 2014, Volume 15]

Rule 27. Sentence and Judgment

[For text of 27.01 and 27.02, see M.S. 2014, Volume 15]

Rule 27.03 Sentencing Proceedings

Subd. 1. Hearings. Sentencing hearings must be held as provided by law:

(A) Misdemeanor and Gross Misdemeanor Hearings. Before the sentencing proceeding in a misdemeanor or gross misdemeanor case:

(1) Either party is permitted to contest any part of an oral presentence investigation. The court may continue the hearing to give the parties this opportunity.

(2) A party must notify the opposing party and the court if the party intends to present evidence to contest any part of the presentence investigation.

(B) Felony Sentencings

(1) Within three days of a plea or finding or verdict of guilty in a felony case, the court may:

- (a) order a presentence investigation and set a date for its return;
- (b) order a mental or physical examination of the defendant;

(2) Within the same three days, the court must:

- (a) order completion of a sentencing guidelines worksheet;
- (b) set a date for sentencing;
- (c) order the defendant to appear on the sentencing date.

(3) If the court intends to consider a mitigated departure from the sentencing guidelines, the court must advise the parties. This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.

(4) The presentence investigation report, if ordered, must conform to Minnesota Statutes, section 609.115, subdivision 1, and include a sentencing guidelines worksheet and any other information the court ordered included.

(5) The court, or the probation officer at the court's direction, must forward the guidelines worksheet and the presentence investigation report to the parties. Confidential sources of information must not be included in the presentence investigation report unless the court otherwise directs. The presentence investigation report must not be disclosed to the public without a court order.

(6) Any party may move for a sentencing hearing after receipt of the presentence investigation and guidelines worksheet.

(a) The motion must be served on the opposing party and filed with the court.

(b) The motion must be served and filed no later than eight days before the hearing, but if the presentence investigation is received less than eight days before the sentencing date, then the motion must be served and filed within a reasonable time.

(c) The court may continue a sentencing hearing to accommodate a sentencing motion.

(d) The motion must state the reasons for the hearing, including the portion of the presentence investigation or worksheet being challenged, and include any affidavits or other documents supporting the motion.

(e) Opposing counsel must serve and file a reply no later than three days before the sentencing hearing.

(7) At the sentencing hearing:

(a) The contested sentencing motions must be heard.

(b) The parties may raise other sentencing issues.

(c) The court must allow the record to be supplemented with relevant testimony.

(d) The court may make findings of fact and conclusions of law on the record or, if in writing, within 20 days of the hearing.

(e) If the court determines the guidelines worksheet or supplement is wrong, the court may order a corrected worksheet submitted to the Sentencing Guidelines Commission.

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

Subd. 2. Defendant's Presence.

(A) The defendant must be present at the sentencing hearing and sentencing, unless excused under Rule 26.03, subd. 1(3).

(B) If the defendant is disabled in communication, a qualified interpreter must be present.

(C) A corporation may be sentenced in the absence of counsel if counsel fails to appear, after notice, at sentencing.

Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court must allow statements from:

(A) the prosecutor, victim, and defense counsel concerning any sentencing issues and a recommended sentence;

(B) persons on behalf of the defendant;

(C) the defendant, personally.

The court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to the parties.

Subd. 4. Sentencing. When pronouncing sentence the court must:

(A) State precisely the terms of the sentence.

(B) State the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and

term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence.

(C) If the court imposes a departure from the sentencing guidelines, the court must make findings of fact supporting the departure. The grounds for departure must be: (a) stated in the sentencing order; or (b) recorded in the departure report as provided by the sentencing guidelines commission and attached to the sentencing order required under subdivision 7. The sentencing order and any attached departure report must be filed with the commission within 15 days after sentencing.

(D) If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.

(E) If the court stays imposition or execution of sentence:

- (1) The court must state the length of the stay.
- (2) In felony cases, the court must tell the defendant that noncustodial probation time will not be credited against a future prison term if the stay is revoked.
- (3) If lawful conduct could violate the defendant's terms of probation, the court must tell the defendant what that conduct is.
- (4) A written copy of the terms of probation must be given to the defendant at sentencing or as soon as possible afterwards.
- (5) The court must inform the defendant that if the defendant disagrees with the probation agent concerning the terms and conditions of probation, the defendant may return to court for clarification.

Subd. 5. Right of Appeal. After sentencing, the court must tell the defendant of the right to appeal both the conviction and sentence, and, if eligible, of the right to appeal at state expense by contacting the state public defender.

Subd. 6. Record. A verbatim record must be made of the sentencing proceedings. If either party requests a transcript, it must be prepared within 30 days of a written request. The party requesting the transcript must pay for it and must make satisfactory arrangements for payment.

Subd. 7. Sentencing Order. When the court pronounces sentence for any counts for which the offense level before sentencing was a felony or gross misdemeanor, the court must record the sentence using an order generated from the court's case management system. This order must at a minimum contain:

- (1) the defendant's name;
- (2) the case number;
- (3) for each count:
 - (a) if the defendant pled guilty or was found guilty:
 - i. the offense date;
 - ii. the statute violated;
 - iii. the pronouncements made under subdivision 4 (precise terms of sentence including any fine, time spent in custody, whether the sentence is a departure and if so, the departure reasons, whether the defendant is placed on probation and if so, the terms and conditions of probation);
 - iv. the level of sentence;
 - v. any restitution ordered, and whether it is joint and several with others;
 - (b) if the defendant did not plead guilty or was not found guilty, whether the defendant was acquitted or the count was dismissed;

- (4) any court costs, library fee, treatment evaluation cost or other financial charge;
- (5) other administrative information determined by the State Court Administrator to be necessary to facilitate transmission of the sentence to the Bureau of Criminal Apprehension, the Commissioner of Corrections, county jails, or probation services;
- (6) the judge's signature.

The sentencing order must be provided in place of the transcript required by Minnesota Statutes, sections 243.49 and 631.41.

Subd. 8. Judgment. The record of a judgment of conviction must contain the plea, verdict, adjudication of guilt, and sentence. If a defendant is found not guilty or is otherwise discharged, judgment must be entered accordingly. A sentence or stay of imposition of sentence is an adjudication of guilt.

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

Subd. 10. Clerical Mistakes. Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.

(Amended effective July 1, 2010; amended effective July 1, 2015.)

Rule 27.04 Probation Revocation

Subd. 1. Initiation of Proceedings.

(1) Warrant or Summons.

(a) Probation revocation proceedings must be initiated by a summons or warrant based on a written report, signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, showing probable cause to believe a probationer violated probation.

(b) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another. If the probationer fails to appear on the summons, the court may issue a warrant.

(2) Contents. The warrant or summons must include:

- (a) the name of the probationer;
- (b) a description of the sentence and the probationary terms allegedly violated;
- (c) the judge's signature;
- (d) a factual statement supporting probable cause to believe the probationer violated the terms of probation;
- (e) the amount of bail or other conditions of release the court may set on the warrant;
- (f) for a warrant, an order directing that the probationer be brought before the court promptly, and in any event not later than 36 hours after arrest, not including the day of arrest;
- (g) for a summons, an order directing the probationer to appear at a specific date, time, and place.

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

Subd. 2. First Appearance.

(1) When the probationer initially appears on the warrant or summons the court must:

- (a) Appoint an interpreter if the probationer is disabled in communication.
- (b) Give the probationer a copy of the violation report, if not already provided.
- (c) Tell the probationer of the right to:
 - a. a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;
 - b. a revocation hearing to determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked;
 - c. disclosure of all evidence used to support revocation and of official records relevant to revocation;
 - d. present evidence, subpoena witnesses, and call and cross-examine witnesses, except the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists;
 - e. present mitigating evidence or other reasons why the violation, if proved, should not result in revocation;
 - f. appeal any decision to revoke probation.
- (2) Appointment of Counsel. Rule 5.04 governs the appointment of counsel for a probationer unable to afford counsel.
- (3) Conditions of Release.
 - (a) A probationer may be released pending the revocation hearing.
 - (b) The conditions of release must consider the factors found in Rule 6.02 and the risk the probationer will flee or pose a danger to any person or the community.
 - (c) The probationer bears the burden of establishing no risk of flight or danger to any person or the community.
- (4) Time of Revocation.
 - (a) The revocation hearing must be held within a reasonable time.
 - (b) If the probationer is in custody because of the violation report, the hearing must be within seven days.
 - (c) If the violation report alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case. If the revocation hearing is not postponed, any testimony the probationer gives at the revocation hearing is not admissible against the probationer at a criminal trial arising from the alleged crime, except for impeachment purposes, or if the probationer is charged with the crime of perjury based on this testimony.
- (5) Record. A verbatim record must be made of the probationer's initial appearance.

Subd. 3. Revocation Hearing.

- (1) Procedure. The revocation hearing must be conducted consistent with the rights outlined in subdivision 2(1)(c)a.-e. above.
- (2) Findings.
 - (a) No Violation. If the court finds no violation of the conditions of probation, the proceedings must be dismissed and the probationer continued on probation under the terms previously ordered.
 - (b) Violation Found. If the court finds or the probationer admits a probation violation, the court may:
 - (i) continue an existing stay of imposition and order probation as provided in Minnesota Statutes, section 609.135;

(ii) impose sentence but stay execution and order probation as provided in Minnesota Statutes, section 609.135;

(iii) impose and execute a sentence;

(iv) continue an existing stay of execution and order probation as provided in Minnesota Statutes, section 609.135;

(v) execute a sentence.

(3) Record. A verbatim record must be made of the probation revocation hearing. If a contested revocation hearing is held, the court must make written findings of fact, including a summary of the evidence relied on in reaching a revocation decision and the basis for the court's decision.

(4) Appeal.

(a) The defendant or the prosecutor may appeal the revocation decision.

(b) Rule 28.05 governs the appeal, except that if an appellant files a notice of appeal within 90 days of the revocation hearing, the appellant's brief must be identified as a probation revocation brief and must be filed within 30 days after delivery of the transcript.

(c) The Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript.

(Amended effective November 1, 2014; amended effective July 1, 2015.)

Rule 27.05 Pretrial Diversion

Subd. 1. Agreements.

(1) A prosecution may be suspended for a specified time and then dismissed under subdivision 6 if:

(a) the agreement is in writing and signed by the parties;

(b) the victim's views are considered;

(c) the court consents;

(d) the court finds a substantial likelihood of conviction and that the benefits of rehabilitation outweigh the harm to society from suspending prosecution.

(2) The agreement must provide that the defendant not commit a new crime or petty misdemeanor and that the defendant waive the right to a speedy trial.

In addition, the agreement may:

(a) include stipulations of fact or of the admissibility of specified testimony, other evidence, and depositions if the diversion agreement is terminated and the case is tried;

(b) provide for any term a court could impose as a condition of probation except the defendant may not be incarcerated as a condition of diversion.

(3) Limitations. The agreement cannot suspend prosecution longer than the period of probation the court could impose if the defendant were convicted. The agreement cannot include a condition the court could not impose as a condition of probation.

Subd. 2. Filing of Agreement; Release. If a diversion agreement is reached, the prosecutor must file the agreement along with a statement suspending the prosecution for a specified time with the court. The defendant must be released when the agreement is filed.

Subd. 3. Modification. The parties, with the court's approval, may agree to modify the terms of the diversion.

Subd. 4. Termination of Agreement and Resumption of Prosecution.

(1) Defendant's Notice. The defendant may terminate the agreement by filing a termination notice with the court. The prosecution will then proceed.

(2) **Prosecutor's Motion.** The court may terminate the agreement on the prosecutor's motion if the court finds:

a. the defendant or defense counsel misrepresented material facts affecting the agreement and the prosecutor moves to terminate the agreement within six months after it commences; or

b. the defendant has committed a material violation of the agreement, and the prosecutor makes the motion no later than one month after the suspension period specified in the agreement expires.

(3) **Issuance of Warrant or Summons.** The court may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit, written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or testimony, finds:

(a) probable cause exists to believe the defendant committed a material violation of the agreement; and

(b) a substantial likelihood exists that the defendant will not appear at a termination hearing.

In lieu of a warrant, the court may issue a summons ordering the defendant to appear.

Subd. 5. Release Status upon Resumption of Prosecution. If the agreement is terminated, the defendant must return to the release status in effect before the agreement, unless the court alters those terms under Rule 6.

Subd. 6. Termination of Agreement and Dismissal of Charges.

(A) **Automatic Dismissal.** The charges must be dismissed one month after the suspension period specified in the agreement expires unless the prosecutor earlier moved to terminate the agreement.

(B) **Dismissal of Motion.** If the court denies the motion to resume prosecution, and the specified suspension time has elapsed, the charges must be dismissed.

(C) **Effect of Dismissal.** If the court dismisses the charge under this rule, the defendant cannot be prosecuted for it.

Subd. 7. Termination and Dismissal on a Showing of Rehabilitation. The court may terminate the agreement, dismiss the charges, and prohibit further prosecution if:

- (1) a party moves for termination and provides facts supporting it;
- (2) the court gives the parties an opportunity to be heard;
- (3) the court finds the defendant has not committed any additional offenses; and
- (4) the court finds the defendant appears to be rehabilitated.

Subd. 8. Modification or Termination. If the court finds the prosecutor obtained the defendant's agreement to diversion because of a material misrepresentation by the prosecutor or a person covered by Rule 9.01, subd. 1a(1), the court may:

- (1) modify the parts of the agreement related to the misrepresentation; or
- (2) if justice requires, terminate the agreement and prohibit further prosecution of the charge.

(Amended effective July 1, 2015.)

Comment - Rule 27

Minnesota Constitution, article I, section 7, provides that all persons before conviction must be bailable by sufficient sureties. The defendant is not entitled to bail as a matter of right after conviction.

If pursuant to Rule 27.02 a presentence report is prepared, the officer conducting the investigation is required by Minnesota Statutes, sections 609.115, subdivision 1, and 611A.037, to advise the victim of the crime concerning the victim's rights under those statutes and under Minnesota Statutes, section 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

The sentencing hearings "as provided by law" under Rule 27.03, subd. 1 would include restitution proceedings under Minnesota Statutes, sections 611A.04 and 611A.045.

Rule 27.03, subd. 1(B)(5), contemplates that the court or the probation officer will provide the parties with a copy of a filed presentence investigation report via electronic transmission or access. Since the advent of the Minnesota Rules of Criminal Procedure, there have been counties in which "confidential portions" of presentence investigation reports were not forwarded to the parties, and were made available to the parties by in-court inspection only. The 2015 amendment to the rule provides that any presentence investigation report filed with the court must also be forwarded to the parties without separation into "nonconfidential" or "confidential" portions, or redaction by the court. If the probation officer has any "confidential sources of information" to disclose (see Minnesota Statutes, section 609.115, subdivision 4), that information must not be contained in the presentence investigation report that is filed with the court, and must be disclosed to the court in a separately filed document or in an in-chambers hearing.

The Sentencing Guidelines Commission recommends that when the felony being sentenced involves a sexual offense, the trial court should order a physical or mental examination of the offender as a supplement to the presentence investigation permitted by Minnesota Statutes, section 609.115. Minnesota Sentencing Guidelines and Commentary, Training Material, 3. E. Rule 27.03, subd. 1(B) permits the court to order these examinations. This rule does not preclude a post-sentence investigation whenever required by statute (Minnesota Statutes, section 609.115, subdivision 2 (sentence of life imprisonment)) or whenever the court considers one necessary. The presentence investigation may include the information obtained on the pretrial release investigation under Rule 6.02, subd. 3. If a defendant is convicted of a domestic abuse offense as defined by Minnesota Statutes, section 609.2244, subdivision 1, a presentence domestic abuse investigation must be conducted. A report must then be submitted to the court that meets the requirements in Minnesota Statutes, section 609.2244, subdivision 2.

The Advisory Committee strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet before the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and may later be included with any presentence investigation report required under Rule 27.03, subd. 1.

The date for the return of the presentence investigation report should be set sufficiently in advance of sentencing to allow counsel sufficient time to make any motion under Rule 27.03, subd. 1(B)(6). The officer conducting the presentence investigation is required by Minnesota Statutes, sections 609.115 and 611A.037, to advise any victim of the crime concerning the victim's rights under those statutes and under Minnesota Statutes, section 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

Rule 27.03, subd. 1(B)(7) is in accord with Minnesota Statutes, section 244.10, subdivision 1, which requires that the court issue written findings of fact, conclusions of law and appropriate order on the issues raised at the sentencing hearing at the conclusion of the hearing or within 20 days afterwards.

In Rule 27.03, subd. 1(B)(8) the term "sentencing hearing" refers to the hearing required by Minnesota Statutes, section 244.10, subdivision 1, on issues of sentencing. In the usual case, actual sentencing should immediately follow.

Minnesota Statutes, section 611A.06, requires the Commissioner of Corrections or other custodial authority to notify the victim of the crime when an offender is to be released from imprisonment. Minnesota Statutes, section 611A.0385, further requires that the court or its designee shall at the time of the sentencing make reasonable good faith efforts to inform any identifiable victims of their right to such notice under Minnesota Statutes, section 611A.06.

Minnesota Statutes, section 244.10, subdivision 2, requires written findings of fact as to the reasons for departure from the sentencing guidelines. The court's statement into the record under Rule 27.03, subd. 4(C), should satisfy this requirement, but the rule further requires that the reasons for departure must be stated in a sentencing order or in a departure report attached to the sentencing order. Whichever document is used, it must be filed with the sentencing guidelines commission within 15 days of the date of the sentencing.

Rule 27.03, subd. 4(D) is designed to eliminate any possible due process notice problems where a defendant does not request a sentencing hearing because of an expectation of receiving a sentence in conformance with the sentencing guidelines. It is also anticipated that fewer sentencing hearings will be requested by the prosecution and defense so long as an opportunity exists to request such a hearing after notice that the court might depart from the guidelines.

Rule 27.03, subd. 4(E) avoids any due process notice problems if the court revokes probation and executes the sentence. Except as provided in Minnesota Statutes, section 609.135, subdivision 7, a defendant has a right to refuse probation when the conditions of the probation are more onerous than a prison sentence, State v. Randolph, 316 N.W.2d 508 (Minn. 1982).

Rule 27.04 does not require an initial probable cause hearing on the probation violation report. The hearing is not constitutionally required if the defendant is not in custody or if the final revocation hearing is held within the time that the preliminary hearing would otherwise be required. Pearson v. State, 308 Minn. 287, 241 N.W.2d 490 (1976). It is, however, necessary under Rule 27.04, subd. 1(2) that the defendant be brought before the court after arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.

If the violation report alleges multiple bases for probation revocation, one of which is an allegation of new criminal conduct, the limited use immunity in Rule 27.04, subd. 2(4)(c), attaches only at the criminal trial arising from the allegation of a new crime.

Rule 27.05 (Pretrial Diversion) does not preclude the prosecutor and defendant from agreeing to diversion of a case without court approval if charges are not pending before the court. The requirement in Rule 27.05, subd. 1(1) that the prosecutor give due consideration of the victim's views is in accord with the requirement in Minnesota Statutes, section 611A.031, that the prosecuting attorney "make every reasonable effort to notify and seek input from the victim" before employing pretrial diversion for certain specified offenses.

With the approval of the court, the pretrial diversion agreement may provide for any term a court could impose as a condition of probation, including restitution. See Minnesota Statutes, sections 611A.04 and 611A.045, as to requiring restitution as part of a sentence.

Under Rule 27.05, subd. 1(3), no condition may be included in the pretrial diversion agreement that could not be imposed upon probation after conviction of the crime charged. See Minnesota Statutes, section 609.135, as to the permissible conditions of probation. See Minnesota Statutes, section 611A.031, regarding the prosecutor's duties under the Victim's Rights Act, for certain designated offenses, to make every reasonable effort to notify and seek input before placing a person into a pretrial diversion program.

Rule 28. Appeals to Court of Appeals

[For text of 28.01, see M.S. 2014, 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 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 30 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) The State Public Defender's office's obligation to order and pay for transcripts for indigent defendants represented by private counsel on appeal is limited to the types of

appeals or proceedings for which the State Public Defender's office is required to provide representation. 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 eligibility of the applicant as in paragraphs (2) through (5) above.

b. If the defendant qualifies, 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 transcript certificate, does not apply. In these cases, the State Public Defender's office on ordering the transcript must transmit 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 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 documents 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 documents 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 appellant must order the transcript, and any requested paper copies, within 30 days after filing of the notice of appeal unless the time is extended by the appellate court for good cause. Any other party may request a paper copy of the transcript as provided in Minnesota Rule of Civil Appellate Procedure 110.02, subd. 2(b), within 10 days of the filing of either the transcript request or the court reporter's acknowledgment and acceptance of the transcript request, whichever is later. The transcript must be filed with the court administrator and a copy transmitted promptly to the attorney for each party.

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; amended effective August 1, 2012; amended effective March 1, 2015.)

Rule 28.03 Certification of Proceedings

In the following circumstances, when any question of law arises that in the district court's opinion is so important or doubtful that the Court of Appeals should decide it, and the defendant requests or consents, the judge must report the case to present the question of law, and certify the report to the Court of Appeals:

- (1) at the trial of any person convicted in any court;
- (2) upon any motion to dismiss a charging document; or
- (3) upon any motion relating to the charging document.

Certification stays all proceedings in the district court until the Court of Appeals decides the question presented. The prosecutor must, upon certification of the report, promptly furnish a copy to the Minnesota Attorney General at the expense of the governmental unit responsible for the prosecution.

The court may stay other criminal cases it has pending that involve or depend on the same question, if the defendant so requests or consents to the stay, until the appellate court decides the certified question. Briefs must be filed and served as provided in Rule 28.04, subd. 2(3), unless the appellate court directs otherwise.

(Amended effective July 1, 2015.)

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 addenda, 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.

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.

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 addenda, 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.

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; amended effective March 1, 2015.)

Rule 28.05 Appeal from Sentence Imposed or Stayed

Subd. 1. Procedure. The following procedures apply to the appeal of a sentence imposed or stayed under these rules:

(1) Notice of Appeal and Briefs. Any party appealing a sentence must file with the clerk of the appellate courts, within 90 days after judgment and sentencing:

- (a) a notice of appeal; and
- (b) proof of service of the notice on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals the State Public Defender's office.

If all transcripts necessary for the appeal have already been transcribed when the appellant files the notice of appeal, the party appealing the sentence must file with the notice of appeal an informal letter brief in the number of copies prescribed by standing order of the appellate court, which must identify itself as a sentencing appeal brief, with proof of service on opposing counsel, the Minnesota Attorney General, and in the case of prosecution appeals the State Public Defender's office. The brief must set out the arguments concerning the illegality or inappropriateness of the sentence.

When the transcripts necessary for the appeal have not been transcribed, the appellant must file with the notice of appeal a request for transcripts, and proof of service of the request on opposing counsel, the Minnesota Attorney General, the court administrator, and in the case of prosecution appeals, the State Public Defender's office.

Appellant's brief must be identified as a sentencing appeal brief and must be served and filed within 30 days after delivery of the transcript. The clerk of the appellate courts

must not accept a notice of appeal from sentence unless accompanied by the requisite briefs or transcript request and proof of service.

A defendant appealing the sentence and the judgment of conviction may combine the two into a single appeal; when this option is selected, the procedures in Rule 28.02 continue to apply.

(2) Transmission of Record. Upon receiving a copy of the notice of appeal, the court administrator must immediately forward to the clerk of the appellate courts:

- (a) a transcript of the sentencing hearing, if any;
- (b) the sentencing order required in Rule 27.03, subd. 7, with the department report, if any;
- (c) the sentencing guidelines worksheet; and
- (d) any presentence investigation report.

(3) Respondent's Brief. Within ten days of service on respondent of appellant's brief, a respondent choosing to respond must serve an informal letter brief on appellant and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court.

(4) Reply Brief. Appellant may serve and file a reply brief within five days after service of the respondent's brief.

(5) Other procedures. The following rules govern the below-listed aspects of sentencing appeals:

- (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. 6: stays;
- (d) Rule 28.02, subd. 7: release of the defendant on appeal; and
- (e) Rule 28.02, subd. 13: oral argument.

Subd. 2. Action on Appeal. The appellate court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the sentencing court's findings of fact. This review exists in addition to all other powers of review.

The court may:

- (a) dismiss or affirm the appeal;
- (b) vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence; or
- (c) order further proceedings as it may direct.

(Amended effective July 1, 2010; amended effective March 1, 2015.)

[For text of 28.06, see M.S. 2014, Volume 15]

Comment - Rule 28

Under Rule 28.02, subd. 1 the defendant may obtain review of lower court orders and rulings only by appeal except as may be provided in the case of the extraordinary writ authorized by Minnesota Constitution, article VI, section 2, and the postconviction remedy, Minnesota Statutes, chapter 590. The statutory authorization for the extraordinary writs is contained in Minnesota Statutes, section 480A.06, subdivision 5, and chapters 586 (Mandamus), 589 (Habeas Corpus), and 606 (Certiorari). The procedure for obtaining writs of mandamus or prohibition appears in Minn. R. Civ. App. P. 120 and 121.

A defendant cannot as a matter of right appeal from a stay of adjudication entered under Minnesota Statutes, section 152.18, subdivision 1, which requires the consent of the

defendant. However, a defendant may seek discretionary review of such a stay under Rule 28.02, subd. 3. *State v. Verschelde*, 595 N.W.2d 192 (Minn. 1999).

Rule 28.02, subd. 3 (Discretionary Review) is taken from Minn. R. Civ. App. P. 105, which sets forth the procedure to be followed by a defendant in seeking permission to proceed with an appeal from an order not otherwise appealable. A defendant seeking to appeal from a sentence imposed or stayed in a misdemeanor or gross misdemeanor case would have to proceed under this rule.

Rule 28.02, subd. 4(4) establishes a procedure by which a defendant who has initiated a direct appeal may nonetheless pursue postconviction relief. Certain types of claims are better suited to the taking of testimony and fact-finding possible in the district court, and defendants are encouraged to bring such claims, such as ineffective assistance of counsel where explanation of the attorney's decision is necessary, through postconviction proceedings rather than through direct appeal. See *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997). The order staying the appeal may provide for a time limit within which to file the postconviction proceeding.

Under Rule 28.02, subd. 9 (Transcript of Proceedings and Transmission of the Transcript and Record), the transcript must be ordered within 30 days after filing of the notice of appeal rather than within ten days as otherwise provided by Minn. R. Civ. App. P. 110.02, subd. 1. The provisions of Minn. R. Civ. App. P. 110 and 111 concerning the content and transmission of the record and transcripts apply to criminal appeals under Rule 28. Therefore, except as provided in Rule 28.02, subd. 5(12), it is necessary in a criminal appeal on ordering the transcript to serve and file a transcript certificate as required by Minn. R. Civ. App. P. 110.02, subd. 2. If either of the parties questions the accuracy of the court reporter's transcript of a videotape or audiotape exhibit, that party may seek to correct the transcript either by stipulation with the other party or by motion to the district court under Minn. R. Civ. App. P. 110.05

To the extent that an order granting a defendant a new trial also suppresses evidence, it will be viewed as a pretrial order concerning the retrial and the prosecutor may appeal the suppression part of the order under Rule 28.04, subd. 1(1). *State v. Brown*, 317 N.W.2d 714 (Minn. 1982). In response to *State v. Lee*, 706 N.W.2d 491 (Minn. 2005), Rule 28.04 subd. 1(4), was revised to expressly permit a prosecutor to appeal a stay of adjudication ordered by the district court over the objection of the prosecutor.

A timely, good-faith motion by the prosecutor for clarification or rehearing of an appealable order extends the time to appeal from that order. *State v. Wollan*, 303 N.W.2d 253 (Minn. 1981). Originally under Rules 28.04, subd. 2(2) and (8) the prosecutor had five days from entry of an appealable pretrial order to perfect the appeal. It was possible for this short time limit to expire before the prosecutor received actual notice of the order sought to be appealed. These rules as revised eliminate this unfairness and assure that notice of the pretrial order will be served on or given to the prosecutor before the five-day time limit begins to run. In *State v. Hugger*, 640 N.W.2d 619 (Minn. 2002), the court held that in computing the five-day time period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays are excluded under Rule 34.01 before the additional three days for service by mail are added under Rule 34.04

Under Rule 28.04, subd. 2(2), failure to timely serve the notice of appeal on the State Public Defender is a jurisdictional defect requiring dismissal of the appeal. *State v. Barrett*, 694 N.W.2d 783 (Minn. 2005).

Absent special circumstances, failure of the prosecutor to file the appellant's brief within the 15 days as provided by Rule 28.04, subd. 2(3) will result in dismissal of the appeal. *State v. Schroeder*, 292 N.W.2d 758 (Minn. 1980).

Rule 28.05, subd. 2 (Action on Appeal) is taken from Minnesota Statutes, section 244.11.

Rule 29. Appeals to Supreme Court

[For text of 29.01 and 29.02, see M.S. 2014, 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 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; amended effective March 1, 2015.)

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 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 addendum, 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 addendum 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 any response, not to exceed ten pages exclusive of the addendum, 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, a cross-petition for review, not to exceed ten pages exclusive of the addendum, 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 addendum 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 transmit 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 addendum within 30 days after filing of the order granting review;
 - (b) respondent must serve and file the respondent's brief and addendum, 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 filing of the order

granting review, serve the appellant's brief on respondent and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court.

Within eight days of service, respondent must serve the respondent's brief on appellant and file with the clerk of the appellate courts the number of copies prescribed by standing order of the appellate court.

(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; amended effective March 1, 2015.)

[For text of 29.05 and 29.06, see M.S. 2014, Volume 15]

Comment - Rule 29

After a first-degree murder conviction, only the Supreme Court has appellate jurisdiction. See Minnesota Statutes, sections 480A.06, subdivision 1, and 632.14. This includes appeals from orders denying post-conviction relief from convictions in first-degree murder cases. See Minnesota Statutes, section 590.06. However, appeals in first-degree murder cases before conviction are decided by the Court of Appeals under Rule 28, and may be reviewed by the Supreme Court via a petition for further review.

Under Minn. R. Civ. App. P. 136.02, the clerk of the appellate courts is to enter judgment under the decision of the Court of Appeals not less than 30 days after that decision is filed. The filing of a petition for review under Rule 29.04 stays entry of the judgment and transmission of the judgment back to the clerk of the district court according to Minn. R. Civ. App. P. 136.02 and 136.03. If the petition for review is denied, the judgment is to be entered and transmitted immediately.

Rule 32. Motions

Requests to the court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing, unless the court or these rules permit it to be

made orally. The motion must state the grounds on which it is made and must set forth the relief or order sought. A motion may be supported by affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

(Amended effective July 1, 2015.)

Rule 33. Service and Filing of Documents; Signature

Rule 33.01 Service; Where Required

Written motions - other than those heard ex parte - written notices, and other similar documents must be served on each party.

(Amended effective July 1, 2015.)

Rule 33.02 Service; On Whom Made

Service required or permitted to be made on a represented party under these rules must be made on the attorney unless the court orders personal service on the party. Service on the attorney or party must be made in the manner provided in civil actions, as ordered by the court, or as required by these rules. Except where personal service is required by these rules, service may be made by electronic means as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Service by authorized electronic means through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

Any notices or copies required to be provided under these rules may also be provided electronically as authorized or required by Rule 14 of the Minnesota General Rules of Practice for the District Courts.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Rule 33.03 Notice of Orders

Upon entry of an order, the court administrator must promptly transmit a copy to each party and must make a record of the transmission. The court administrator may provide a copy by electronic means as authorized or required by Rule 14 of the Minnesota Rules of General Practice. The transmission of the order constitutes the notice of its entry. As long as the order transmitted indicates the date the order was entered, the order need not be accompanied by a separate notice of entry. Lack of notice of entry by the court administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, unless these rules direct otherwise.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Rule 33.04 Filing

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

(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 documents, and any order granting the request not be filed, or be filed under seal.

(d) An order must be issued granting the request in whole or in part if, from affidavits, written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, sworn testimony, or other evidence, the court finds reasonable grounds exist to believe that: (1) in the case of complaint, indictment, or arrest documents, making the document public 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, making the document public 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 and the arrest warrant filed with the court must be made public. For a search warrant, following the commencement of any criminal proceeding utilizing evidence obtained in or as a result of the search, the supporting documents must be filed either immediately or at any other time as the court directs. If the search warrant was previously filed under seal, the documents and materials must be kept under seal until the court directs otherwise.

(f) Except as otherwise specified in these rules, documents may be filed electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Notwithstanding Rule 14 of the Minnesota General Rules of Practice for the District Courts, documents prepared and presented to the court during a court proceeding, including but not limited to a signed guilty plea petition or signed waiver of counsel, are not required to be filed electronically.

(g) Any signature, other than those governed by Rule 1.06, that is required by these rules may be affixed electronically by any electronic means.

(Amended effective September 1, 2011; amended effective September 1, 2012; amended effective July 1, 2015.)

Rule 33.05 Facsimile and Electronic Transmission

(a) Facsimile Transmission. Complaints, orders, summons, warrants, and supporting documents - including orders and warrants issued under Minnesota Statutes, chapter 626A - may be sent via facsimile transmission. A facsimile order or warrant issued by the court is valid and enforceable.

(b) Electronic Transmission. Search warrants and supporting documents including orders and warrants issued under Minnesota Statutes, chapter 626A, may be sent and signed electronically under a method approved by the State Court Administrator. Any search warrant signed electronically under a method approved by the State Court Administrator is valid and enforceable.

(Amended effective September 1, 2011; amended effective September 1, 2012; amended effective July 1, 2015.)

Comment - Rule 33

Minn. R. Civ. P. 5.02 provides the method for service in civil actions.

Search warrants may be required by affidavit or by oral testimony, and may be obtained in person and signed on paper, exchanged by facsimile and signed on paper, or exchanged and signed electronically under a method approved by the State Court Administrator. The rules do not require a warrant to be obtained in a particular manner. With the number of variations in how a warrant may be requested, how the documents may be transmitted, and how the signature may be applied, there is no longer what was traditionally considered an "original" warrant in many circumstances. Regardless of the method by which the warrant was obtained, if the warrant was requested and signed under one of the approved processes, the warrant is valid and enforceable.

Rule 34. Time

Rule 34.01 Computation

Time must be computed as follows except as provided by Rules 3.02, subd. 2; 4.02, subd. 5(1); 4.02, subd. 5(3); and 4.03.

The day of the act or event from which the designated period of time begins to run must not be included. The last day of the period must be included, unless it is a Saturday, a Sunday, a legal holiday, a day on which weather or other conditions result in the closing of

the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days. When a period of time prescribed or allowed is seven or fewer days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation. As used in these rules, "legal holiday" includes any holiday defined or designated by statute, any other day appointed as a holiday by the President or the Congress of the United States or by the State, and a day that the United States Mail does not operate.

(Amended effective July 1, 2015.)

[For text of 34.02, see M.S. 2014, Volume 15]

Rule 34.03 For Motions; Affidavits; Statements Under Penalty of Perjury

A written notice of motion and motion, other than one that may be heard ex parte, must be served at least five days before the time specified for the hearing, unless a rule or court order fixes a different time. For cause, an order fixing a different time may be granted on ex parte application.

When a party supports a motion by affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, the supporting document must be served at least one day before the hearing, unless the court permits it to be served later.

(Amended effective July 1, 2015.)

Rule 34.04 Additional Time After Service by Mail or Electronic Service Late in the Day

When a party is served with a notice or other paper by mail, three days must be added to the time the party has the right, or is required, to act. If service is made by electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day must be added to the time the party has the right, or is required, to act.

(Amended effective July 1, 2015.)

[For text of 34.05, see M.S. 2014, Volume 15]

Comment - Rule 34

Rule 34.01 (Computation) adopts Minn. R. Civ. P. 6.01 except that it excludes Saturdays, Sundays, and legal holidays from computation when the period of time allowed is "seven days or less" rather than "less than seven days." Minnesota Statutes, section 645.44, subdivision 5, sets forth the legal holidays for the State of Minnesota.

In State v. Hugger, 640 N.W.2d 619 (Minn. 2002), the Supreme Court held that when calculating the five-day period within which an appeal must be taken under Rule 28.04, subd. 2(8), intermediate Saturdays, Sundays, and legal holidays must be excluded from the computation of the period allowed under Rule 34.01 before the additional three days by mail are added under Rule 34.04.

Rule 35. Courts and Court Administration

The district courts are deemed open at all times for the purpose of filing any proper document, issuing and returning or certifying process, and making motions and orders. Unless otherwise ordered, the courts are deemed open at all times, except legal holidays, for the transaction of any other business that may be presented. The court administrator's office, with the court administrator or a deputy in attendance, must be open during business hours on all days except Saturdays, Sundays, or legal holidays.

(Amended effective July 1, 2015.)

Comment - Rule 35

Legal holidays are defined by Minnesota Statutes, section 645.44, subdivision 5. The rule supersedes Minnesota Statutes, sections 484.07 and 484.08, to the extent inconsistent.

Rule 36. Search Warrants on Oral Testimony**Rule 36.01 General Rule**

A request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge, subject to the limitations in this rule. Oral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile or electronic transmission, or by other appropriate means.

Rule 36.02 When Request by Oral Testimony Appropriate

An oral request for a search warrant may only be made in circumstances that make it reasonable to dispense with a written affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The judge must make this determination the initial focus of the oral warrant request.

Rule 36.03 Application

The person requesting the warrant must prepare a duplicate original warrant and must read the duplicate original warrant, verbatim, to the judge. The judge must prepare an original warrant by recording, verbatim, what has been read by the applicant. The judge may direct modifications, which must be included on the original and any duplicate original warrant. Alternatively, with the permission of the judge, the warrant may be transmitted to the judge by facsimile or electronic transmission, or by other appropriate means.

Rule 36.04 Testimony Requirements

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

- (1) Immediately begin recording, electronically, stenographically, or longhand verbatim the testimony of all persons involved in making the warrant application. Alternatively, with the permission of the judge, the recording may be done by the applicant for the search warrant, but the tape or other medium used to make the record must be submitted to the issuing judge as soon as practical, and no later than the time for filing in Rule 33.04.
- (2) Identify and place under oath each person whose testimony forms a basis of the application, and each person applying for the warrant.
- (3) As soon as is practical after receiving the testimony, the judge must direct that the record of the oral warrant request be transcribed. The judge must certify the accuracy of the transcription. If a longhand verbatim record is made, the judge must sign it.

Rule 36.05 Issuance of Warrant

The judge must order issuance of a warrant if:

- (a) the circumstances make it reasonable to dispense with a written affidavit, or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116;
- (b) the warrant request conforms with the law; and
- (c) probable cause exists for issuance of the warrant.

The judge may order the issuance of a warrant by directing the applicant to sign the judge's name on the duplicate original warrant, and if so, the judge must immediately sign the original warrant and enter on the face of the original warrant the exact time the judge signed the warrant. Alternatively, the judge may sign the warrant and transmit it to the officer by electronic transmission, or by other appropriate means. The finding of probable cause may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

Rule 36.06 Filing

The warrant, the certified transcript of the oral application for the warrant, any long-hand verbatim record, and any related documents must be filed as Rule 33.04 requires. If the oral warrant request is recorded on tape or other electronic recording device, the original tape or other medium must also be filed with the court.

Rule 36.07 Contents of Warrant

The contents of a warrant issued on oral testimony must be the same as the contents of a warrant on affidavit.

Rule 36.08 Execution

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

(Amended effective July 1, 2015.)

Comment - Rule 36

The procedure found in Rule 36 is derived from State v. Lindsey, 473 N.W.2d 857 (Minn. 1993).

Minnesota Statutes, section 626.16, which requires that a written document be prepared for presentation to the person whose premises or property is searched, or that can be left on the premises if no persons are present, mandates the preparation of the duplicate warrant in Rule 36.03. Judges and judicial officers who may receive oral warrant requests at home are advised to have appropriate forms available for preparation of the original warrant.

Judges are cautioned to avoid engaging in any preliminary unrecorded and unsworn conversation with the officer or prosecutor. See ABA Guidelines for the Issuance of Search Warrants, Guideline 11(3) (1990).

The officer and the judge must keep in mind that in addition to the special requirements for issuance of an oral warrant, all other requirements for the issuance of a warrant must also be met, including the basis for a no-knock and nighttime warrant. See Minnesota Statutes, sections 626.01 to 626.18 and 629.30.

Rules 36.07 and 36.08 emphasize that the use of the oral warrant process does not justify any other departures from traditional warrant law and practice.