



Appendix A: Rules of Criminal Procedure



Minnesota Rules of Criminal Procedure Rule 5 - Procedure on First Appearance

Rule 5.01 - Statement to the Defendant

A defendant arrested with or without a warrant or served with a summons or citation appearing initially before a judge or judicial officer, shall be advised of the nature of the charge. The court shall first determine whether the defendant is handicapped in communication. A defendant is handicapped in communication if, (a) because of either a hearing, speech or other communications disorder, or (b), because of difficulty in speaking or comprehending the English language, the defendant cannot fully understand the proceedings or any charges made against the defendant or is incapable of presenting or assisting in the presentation of a defense. If a defendant is handicapped in communication, the judge or judicial officer shall appoint a qualified interpreter to assist the defendant throughout the proceedings. The proceedings at which a qualified interpreter is required are all those covered by these rules which are attended by the defendant. A defendant who has not previously received a copy of the complaint, if any, and supporting affidavits and the transcription of any supplementary testimony, shall be provided with copies thereof. Upon motion of the prosecuting attorney, the court shall require that the defendant be booked, photographed, and fingerprinted. In cases of felonies and gross misdemeanors, the defendant shall not be called upon to plead.

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

- (a) That the defendant is not required to say anything or submit to interrogation and that anything the defendant says may be used against the defendant in this or any subsequent proceeding;
- (b) That the defendant has a right to counsel in all subsequent proceedings, including police line-ups and interrogations, and if the defendant appears without counsel and is financially unable to afford counsel, that counsel will forthwith be appointed without cost to the defendant charged with an offense punishable upon conviction by incarceration;
- (c) That the defendant has a right to communicate with defense counsel and that a continuance will be granted if necessary to enable defendant to obtain or speak to counsel;
- (d) That the defendant has a right to a jury trial or a trial to the court;

- (e) That if the offense is a misdemeanor, the defendant may either plead guilty or not guilty, or demand a complaint prior to entering a plea;
- (f) That if the offense is a designated gross misdemeanor as defined in [Rule 1.04\(b\)](#) and a complaint has not yet been made and filed, a complaint must be issued within 10 days if the defendant is not in custody or within 48 hours if the defendant is in custody.

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

Minnesota Rules of Criminal Procedure [Rule 8](#) -
Defendant's Initial Appearance Before the District Court Following
the Complaint or Tab Charge in Felony and Gross Misdemeanor Cases

Rule 8.01 - Place of Appearance and Arraignment

The defendant's initial appearance following the complaint or, for a designated gross misdemeanor as defined by [Rule 1.04\(b\)](#), a tab charge under this rule shall be held in the district court of the judicial district where the alleged offense was committed.

Unless the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to a grand jury, or the offense is punishable by life imprisonment, the defendant shall be arraigned upon the complaint or the complaint as it may be amended or, for designated gross misdemeanors, the tab charge, but may only enter a plea of guilty at that time. If the defendant does not wish to plead guilty, no other plea shall be called for and the arraignment shall be continued until the Omnibus Hearing when pursuant to [Rule 11.10](#) the defendant shall plead to the complaint or the complaint as amended or be given additional time within which to plead. If the offense charged in the complaint is a homicide and the prosecuting attorney notifies the court that the case will be presented to the grand jury, or if the offense is punishable by life imprisonment, the presentation of the case to the grand jury shall commence within 14 days from the date of defendant's appearance in the court under this rule, and an indictment or report of no indictment shall be returned within a reasonable time. If an indictment is returned, the Omnibus Hearing under [Rule 11](#) shall be held as provided by [Rule 19.04, subd. 5](#).

Minnesota Rules of Criminal Procedure [Rule 11](#) - Hearing on Evidentiary Issues

Subd. 1. Evidence. If the defendant or prosecution has demanded a hearing on either of the issues specified by [Rule 8.03](#), the court shall hear and determine them upon such evidence as may be offered by the prosecution or the defense. If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record.

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

Minnesota Rules of Criminal Procedure [Rule 15](#) -
Procedure Upon Plea of Guilty; Plea Agreements; Plea Withdrawal;
Plea to Lesser Offense

[Rule 15.01](#) - Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases

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

1. Name, age and date and place of birth and whether the defendant is handicapped in communication and, if so, whether a qualified interpreter has been provided for the defendant.
2. Whether the defendant understands the crime charged.
3. Specifically, whether the defendant understands that the crime charged is (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota (and that the defendant is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser included offense of the crime charged).
4. a. Whether the defendant has had sufficient time to discuss the case with defense counsel.

b. Whether the defendant is satisfied that defense counsel is fully informed as to the facts of the case, and that defense counsel has represented the defendant's interests and fully advised the defendant.
5. Whether the defendant has been told by defense counsel and understands that upon a plea of not guilty, there is a right to a trial by jury and that a finding of guilty is not possible unless all jurors agree.
6. a. Whether the defendant has been told by defense counsel and understands that there will not be a trial by either a jury or by a judge without a jury if the defendant pleads guilty.

b. Whether the defendant waives the right to a trial.
7. Whether the defendant has been told by defense counsel, and understands that if the defendant wishes to plead not guilty and have a trial by jury or by a judge, the

defendant will be presumed to be innocent until guilt is proved beyond a reasonable doubt.

8. a. Whether the defendant has been told by defense counsel, and understands that if the defendant wishes to plead not guilty and have a trial, the prosecutor will be required to have the prosecution witnesses testify in open court in the defendant's presence, and that the defendant will have the right, through defense counsel, to question these witnesses.

b. Whether the defendant waives the right to have these witnesses testify in the defendant's presence in court and be questioned by defense counsel.
9. a. Whether the defendant has been told by defense counsel and understands that if the defendant wishes to plead not guilty and have a trial, the defendant will be entitled to require any defense witnesses to appear and testify.

b. Whether the defendant waives this right.
10. Whether defense counsel has told the defendant and the defendant understands:
 - a. That the maximum penalty that the court could impose for the crime charged (taking into consideration any prior conviction or convictions) is imprisonment for _____ years.
 - b. That if a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than _____ months for the crime charged.
 - c. That for felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.
 - d. That if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
11. Whether defense counsel has told the defendant that the defendant discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if the defendant entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)
12. Whether defense counsel has told the defendant and the defendant understands that

if the court does not approve the plea agreement, the defendant has an absolute right to withdraw the plea of guilty and have a trial.

13. Whether, except for the plea agreement, any policeman, prosecutor, judge, defense counsel, or any other person, made any promises or threats to the defendant or any member of the defendant's family, or any of the defendant's friends, or other persons in order to obtain a plea of guilty.
14. Whether defense counsel has told the defendant and the defendant understands that if the plea of guilty is for any reason not accepted by the court, or is withdrawn by the defendant with the court's approval, or is withdrawn by court order on appeal or other review, that the defendant will stand trial on the original charge (charges) namely, (state the offense) (which would include any charges that were dismissed as a result of the plea agreement) and that the prosecution could proceed just as if there had never been any agreement.
15. a. Whether the defendant has been told by defense counsel and understands, that if the defendant wishes to plead not guilty and have a jury trial, the defendant can testify if the defendant wishes, but that if the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.

b. Whether the defendant waives this right, and agrees to tell the court about the facts of the crime.
16. Whether with knowledge and understanding of these rights the defendant still wishes to enter a plea of guilty or instead wishes to plead not guilty.
17. Whether the defendant makes any claim of innocence.
18. Whether the defendant is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.
19. Whether the defendant has any questions to ask or anything to say before stating the facts of the crime.
20. What is the factual basis for the plea.

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

Minnesota Rules of Civil Procedure [Rule 26](#) - General Provisions Governing Discovery

[26.01](#) - Discovery Methods

Parties may obtain discovery by one or more of the following methods: depositions by oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property; for inspection and other purposes; physical (including blood) and mental examinations; and requests for admission.

[26.02](#) - Discovery, Scope and Limits

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(a) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information sought need not be admissible at the trial if discovery appears reasonably calculated to lead to the discovery of admissible evidence.

The court may establish or alter the limits on the number of depositions and interrogatories and may also limit the length of depositions under [Rule 30](#) and the number of requests under [Rule 36](#). The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26.03.

(b) Insurance Agreements. In any action in which there is an insurance policy which may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to [Rule 34](#), may obtain

production of the insurance policy; provided, however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds.

(c) Trial Preparation: Materials. Subject to the provisions of Rule 26.02(d) a party may obtain discovery of documents and tangible things otherwise discoverable pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a party or other person may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of [Rule 37.01](#) (d) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to [Rule 26.02](#)(a) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Rule 26.02(d)(3), concerning fees and expenses, as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in [Rule 35.02](#) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (A) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to [Rules 26.02\(d\)\(1\)\(B\)](#) and [26.02\(d\)\(2\)](#); and (B) with respect to discovery obtained pursuant to [Rule 26.02\(d\)\(1\)\(B\)](#), the court may require, and with respect to discovery obtained pursuant to [Rule 26.02\(d\)\(2\)](#) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(e) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Minnesota Rules of Criminal Procedure Rule 26 – Trial

Rule 26.01 - Trial by Jury or by the Court

Subd. 1. Trial by Jury. (1)

Right to Jury Trial.

(a) Offenses Punishable by Incarceration. A defendant shall be entitled to a jury trial in any prosecution for an offense punishable by incarceration. All trials shall be in the district court.

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

(2) Waiver of Trial by Jury.

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

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

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

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

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

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

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

Subd. 3. Trial on Stipulated Facts. By agreement of the defendant and the prosecuting attorney, a case may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the defendant shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the defendant's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the defense in court. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as on any other trial to the court. If the defendant is found guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal the same as from any trial to the court.

Rule 26.02 - Selection of Jury

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

Subd. 2. Juror Information.

(1) List of Prospective Jurors. Upon request the clerk of court shall furnish the parties with a list of the names and addresses of the persons on the jury panel and such other information as the clerk of court has obtained from the prospective jurors,

unless otherwise ordered by the trial court after a hearing in accordance with this rule.

(2) Anonymous Jurors. Upon the motion of a party that there is a special need to restrict the parties' access to names, addresses, telephone numbers, and other identifying information of prospective and selected jurors, the court shall hold a hearing on the motion. The court may order that the parties' and the public's access to this information about the prospective jurors be restricted only if it determines that in the individual case there is a strong reason to believe that the jury needs protection from external threats to its members' safety or impartiality. The court order may restrict access to such information during jury selection, trial and later for so long as such protection is necessary. Jurors and prospective jurors may be identified by number or by other method that protects their identity. If the court restricts access to this information, the court must also take reasonable precautions to minimize any possible prejudicial effect the restriction on access to this information might have on the defendant or the state.

The court shall make clear and detailed findings of fact in writing or on the record in open court supporting its determination that the restriction on access to information about the prospective and selected jurors is necessary for their safety or impartiality.

(3) Jury Questionnaire. As a supplement to oral voir dire, a sworn jury questionnaire designed for use in criminal cases may be used to obtain information helpful to the parties and the court in jury selection before the jurors are called into court for examination. The court may on its own initiative or on request of counsel include in the questionnaire additional questions that may elicit sensitive information. If sensitive questions are included, the prospective jurors shall be advised that instead of answering any particular sensitive questions in writing they may request an opportunity to address the court in camera, with counsel and the defendant present, concerning their desire that their answers to any particular sensitive questions not be public. When such a request is made by a prospective juror, the court shall proceed under [Rule 26.02, subd. 4\(4\)](#) and decide whether the particular sensitive questions may be answered during oral voir dire with the public excluded. Court personnel may hand out the questionnaire to the prospective jurors and collect them when completed. The court shall make the completed questionnaires available to counsel.

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

Subd. 4. Voir Dire Examination.

(1) Purpose--By Whom Made. A voir dire examination shall be conducted for the purpose of discovering bases for challenge for cause and for the purpose of gaining knowledge to enable an informed exercise of peremptory challenges, and shall be open to the public except upon order of the court as provided by [Rule 26.02](#), subd. 4(4). The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge shall then put to the prospective juror or jurors any questions which the judge thinks necessary touching their qualifications to serve as jurors in the case on trial and may give such preliminary instructions as are set forth in [Rule 26.03, subd. 4](#). Before exercising challenges, either party may make a reasonable inquiry of a prospective juror or jurors in reference to their qualifications to sit as jurors in the case. A verbatim record of the voir dire examination shall be made at the request of either party.

(2) Sequestration of Jurors.

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

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

(3) Order of Drawing, Examination and Challenge.

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

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of peremptory challenges available to all the parties and the number of any alternate jurors.
2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.
3. The prospective jurors shall be examined as to their qualifications, first

by the court, then by the parties, commencing with the defendant.

4. A challenge for cause may be made at any time during voir dire by any party. At the close of voir dire any additional challenges for cause shall be made, first by the defense and then by the prosecution.
5. If any prospective juror is challenged and excused for cause another shall be drawn from the jury panel so that the number in the jury box will remain equal to the number initially called.
6. After both parties have had an opportunity to challenge for cause, each, commencing with the defendant, may exercise alternately the peremptory challenges permitted by these rules.
7. When the peremptory challenges have been exercised, the jury shall be selected from the remaining prospective jurors in the order in which they were called until the number selected equals the number of which the jury shall be composed for trial of the case plus the alternate jurors, if any.

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

1. The court shall first direct that such a number of the members of the jury panel be drawn and called as will equal the number of which the jury shall be composed for trial of the case plus the number of any alternate jurors.
2. The prospective jurors so drawn and called shall take their place in the jury box and be sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the case.
3. The prospective jurors shall be examined as to their qualifications, first by the court, then by the parties, commencing with the defendant.
4. Upon completion of defendant's examination of a prospective juror, the defendant shall be permitted to exercise a challenge for cause or a peremptory challenge as permitted by these rules as to that juror. A juror who is excused shall be replaced by another member of the panel. The replacement juror shall be examined and challenged after all previously drawn jurors have been examined and challenged.
5. Upon completion of the examination and any challenge of each prospective juror by the defendant, the state may examine such prospective juror and may challenge the juror for cause or peremptorily. A juror who is excused

shall be replaced by another member of the panel who shall be subject to examination and challenge in accordance with this rule.

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

(c) By Order of Court.

1. The court shall direct that one prospective juror at a time be drawn from the jury panel for examination.
2. The prospective juror so drawn shall be sworn to answer truthfully questions asked relative to the prospective juror's qualifications to serve as a juror in the case.
3. The prospective juror shall be examined by the court and then by the parties, commencing with the defendant.
4. Upon completion of defendant's examination, the defendant may challenge the juror for cause or peremptorily as permitted by these rules.
5. If the juror is excused, another prospective juror shall be drawn from the panel and shall be examined and subject to challenge in the same manner.
6. A prospective juror who is not excused after examination by the defendant may be examined by the state and may be challenged for cause or peremptorily by the state.
7. This process of selection shall continue until the number of persons of which the jury shall be composed for trial of the case is selected and sworn as the trial jury plus the number of any alternate jurors.
8. In cases of first degree murder, the method provided by [Rule 26.02, subd. 4\(3\)\(c\)](#) shall be preferred unless otherwise ordered by the court.

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

- (a) Advisory. When it appears that prospective jurors during voir dire may be asked sensitive questions that could be embarrassing to them, the court may on

its own initiative or on request of the defense or the prosecution, advise the prospective jurors that they may request an opportunity to address the court in camera, with counsel and defendant present, concerning their desire to exclude the public from voir dire when the sensitive questions are asked.

(b) In Camera Hearing. If a prospective juror requests an opportunity to address the court in camera concerning exclusion of the public from voir dire during sensitive questioning, the court shall conduct an in camera hearing on that issue on the record with counsel and the defendant also present. The court shall consider at the hearing whether there are any reasonable alternatives to closing voir dire.

(c) Standards. In considering the request to exclude the public during voir dire, the court shall balance the juror's privacy interests, the defendant's right to a fair and public trial, and the public's interest in access to the courts. The court may order closure of voir dire only if it finds that there is a substantial likelihood that conducting the voir dire in open court would interfere with an overriding interest, including the defendant's interest in a fair trial and the juror's legitimate privacy interests in not disclosing deeply personal matters to the public. Any closure of voir dire shall be no broader than is necessary to protect the overriding interests involved.

(d) Refusal to Close Voir Dire. If the court determines that there is no overriding interest to justify excluding the public from voir dire, the voir dire shall continue in open court on the record and upon request the in camera proceeding shall be transcribed and filed with the court administrator within a reasonable time.

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

(f) Findings of Fact. No order excluding the public from any part of the voir dire shall issue without the court setting forth the reasons therefor either in writing or orally on the record. The findings shall indicate why the defendant's right to a fair trial and the jurors' interests in privacy would be threatened by an open voir dire and shall also include a review of alternatives to closure and a statement of why the court believes such alternatives are inadequate.

(g) Record. Whenever under this rule in camera proceedings are held on a juror's request for closure or the public is excluded from any part of the voir dire, a complete record of the proceedings shall be made. Upon request, the record shall be transcribed within a reasonable time and shall be filed with the court administrator. The transcript shall be available to the public, but only if such disclosure can be accomplished while safeguarding the overriding interests

involved. The court may order that the transcript or any part of it be sealed, that the name of a juror be withheld, or parts of the transcript be excised if the court finds that it is necessary to do so to protect the overriding interests involved.

Subd. 5. Challenge for Cause.

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

1. The existence of a state of mind on the part of the juror, in reference to the case or to either party, which satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the party challenging.
2. A felony conviction unless the juror's civil rights have been restored.
3. The lack of any of the qualifications prescribed by law to render a person a competent juror.
4. A physical or mental defect which renders the juror incapable of performing the duties of a juror.
5. The consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.
6. Standing in relation of guardian and ward, attorney and client, employer and employee, landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense, or on whose complaint the prosecution was instituted.
7. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by the defendant, in a criminal prosecution.
8. Having served on the grand jury which found the indictment, or an indictment on a related offense.
9. Having served on a trial jury which has tried another person for the same or a related offense to that charged in the indictment, complaint, tab charge or a related indictment, complaint or tab charge.
10. Having been a member of a jury formerly sworn to try the same

indictment, complaint, tab charge or a related indictment, complaint or tab charge.

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

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

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

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

Subd. 6a. Objections to Peremptory Challenges.

(1) Rule. No party may engage in purposeful discrimination on the basis of either race or gender in the exercise of peremptory challenges.

(2) Procedure. Any party, or the court, may object to the exercise of a peremptory challenge on the ground of purposeful racial or gender discrimination at any time before the jury is sworn to try the case. The objection and all arguments thereon shall be heard out of the hearing of the jury panel and the individual jury panel member involved. A record shall be made of all proceedings upon the objection. All issues of law or fact arising upon the objection shall be tried and determined by the court as promptly as possible, but in all events it shall be done before the jury is sworn to try the case.

(3) Determination. The trial court shall use a three-step process for evaluating a claim that any party has engaged in purposeful racial or gender discrimination in the exercise of its peremptory challenges:

(a) First, the party making the objection must make a prima facie showing that the

responding party has exercised its peremptory challenges on the basis of race or gender. If the objection was raised by the court on its own initiative then the court must initially determine, after such hearing as it deems appropriate, that there is a prima facie showing that the responding party has exercised its peremptory challenges on the basis of race or gender. If no prima facie showing is found, the objection shall be overruled.

(b) Second, if the court determines that a prima facie showing has been made, the responding party must articulate a race-neutral or gender-neutral explanation, as applicable, for exercising the peremptory challenge(s) in question. If no race-neutral or gender-neutral explanation is articulated, the objection shall be sustained.

(c) Third, if the court determines that a race-neutral or gender-neutral explanation has been articulated, the objecting party, must prove that the proffered explanation is pretextual. If the objection was initially raised by the court, it shall determine, after such hearing as it deems appropriate, whether the peremptory challenge was exercised in a purposeful discriminatory manner on the basis of race or gender. If purposeful discrimination is proved the objection shall be sustained. If no purposeful discrimination is proved the objection shall be overruled.

(4) Remedies. If the objection is overruled the jury panel member against whom the peremptory challenge was exercised shall be excused. If the objection is sustained, the court shall do either of the following based upon its determination of what the interests of justice and a fair trial to all parties in the case require:

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

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

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

- a. To the panel.
- b. To an individual juror for cause.
- c. Peremptory challenge to an individual juror.

Subd. 8. Alternate Jurors. A trial judge may impanel alternate or additional jurors whenever in the judge's discretion, the judge believes it advisable to have such jurors

available to replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall be discharged after the jury retires to consider its verdict. Alternate jurors, in the order in which they are called, shall replace jurors who prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, and be subject to the same examination and challenges for cause as the regular jurors. No additional peremptory challenges shall be allowed for alternate jurors except that unused peremptory challenges for the regular jury may be exercised against alternate jurors. If a juror becomes unable or disqualified to perform a juror's duties after the jury has retired to consider its verdict, a mistrial shall be declared unless the parties agree pursuant to [Rule 26.01, subd. 1 \(4\)](#) that the jury shall consist of a lesser number than that selected for the trial.

Rule 26.03 - Procedures During Trial

Subd. 1. Presence of Defendant.

(1) Presence Required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. If the defendant is handicapped in communication, a qualified interpreter for that defendant shall also be present at each of these proceedings.

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

1. a defendant voluntarily and without justification absents himself or herself after trial has commenced; or
2. a defendant after warning engages in conduct which is such as to justify being excluded from the courtroom because it tends to interrupt the orderly procedure of the court and the due course of the trial. As an alternative to exclusion, the court may use all such methods of restraint as will ensure the orderly procedure of the court and the due course of the trial.

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

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

2. in the case of felonies and gross misdemeanors, on defendant's motion, the court may excuse the defendant from attendance at any proceeding except arraignment, plea, trial, and imposition of sentence; and
3. in prosecutions for misdemeanors, the court shall permit arraignment and plea in the defendant's absence if the court is satisfied that the defendant has knowingly and voluntarily waived the right to be present. The court with the written consent of the defendant, or the defendant's oral consent in open court, may permit trial, and imposition of sentence in the defendant's absence.
4. The court in its discretion and upon agreement of the defendant may allow the participation by telephone of one or more parties, counsel, or the judge in any proceedings in which the defendant would otherwise be permitted to waive personal appearance under these rules.

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

- a. During the trial the defendant shall be seated so as to effectively consult with defense counsel and to see and hear the proceedings.
- b. An incarcerated defendant or witness shall not appear in court in the distinctive attire of a prisoner.
- c. Defendants and witnesses shall not be subjected to physical restraint while in court unless the trial judge has found such restraint reasonably necessary to maintain order or security. A trial judge who orders such restraint, shall state the reasons on the record outside the presence of the jury. Whenever physical restraint of a defendant or witness occurs in the presence of jurors trying the case, the judge shall on request of the defendant instruct those jurors that such restraint is not to be considered in assessing the proof and determining guilt.

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

Subd. 4. Preliminary Instructions. After the jury has been impaneled and sworn, and before the opening statements of counsel, the court may instruct the jury as to the respective claims of the parties and as to such other matters as will aid the jury in comprehending the trial procedure and sequence to be followed. Preliminary instructions may also include such matters as burden of proof, presumption of

innocence, the necessity of proof of guilt beyond a reasonable doubt, the elements which the jury may consider in weighing testimony or determining credibility of witnesses, rules applicable to opinion evidence, and such other rules of law, including the essential elements of the offense, as the court may deem essential to the proper understanding of the evidence. Such preliminary instructions shall be disclosed to the parties before they are given and either party may object to any specific instruction or propose other instructions to be given prior to trial.

Subd. 5. Sequestration of the Jury.

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

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

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

(1) Grounds for Exclusion of Public. If the jury is not sequestered, the court on its initiative or on motion of the defendant or the prosecuting attorney may order that the public be excluded from any portion of the trial that takes place outside the presence of the jury on the ground that dissemination of evidence or argument adduced at the hearing may interfere with an overriding interest including that it is likely to interfere with a fair trial by an impartial jury. The motion shall not be granted unless it is determined that there is a substantial likelihood of such interference. In determining the motion the court shall consider reasonable alternatives to closing such portion of the trial and the closure shall be no broader than is necessary to protect the overriding interest involved.

(2) Notice to Adverse Counsel. If, during trial, counsel for either the prosecution or

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

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

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

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

(6) Records. Whenever under this rule part of the proceedings are closed to the public, a complete record of those proceedings shall be made and upon request shall be transcribed at public expense and filed and shall be available to the public following the completion of the trial. For the protection of innocent persons, the court may order that names be deleted or substitutions therefor be made in the record.

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

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

Subd. 7. Cautioning Parties, Witnesses, Jurors and Judicial Employees; Insulating

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

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

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

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

Subd. 10. View by Jury.

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

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

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

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

a. The jury shall be selected and sworn.

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

- c. The prosecuting attorney may make an opening statement to the jury, confining the statement to the facts the prosecuting attorney expects to prove.
- d. The defendant may make an opening statement to the jury, or may make it immediately before offering evidence in defense. The statement shall be confined to a statement of the defense and the facts the defendant expects to prove in support thereof.
- e. The prosecution shall offer evidence in support of the indictment, complaint or tab charge.
- f. The defendant may offer evidence in defense.
- g. The prosecution may offer evidence in rebuttal of the defense evidence, and the defendant may then offer evidence in rebuttal of the prosecution's rebuttal evidence. In the interests of justice, the court may permit either party to offer evidence upon the party's original case.
- h. At the conclusion of the evidence, the prosecution may make a closing argument to the jury.
- i. The defendant may then make a closing argument to the jury.
- j. The prosecution may then make a rebuttal argument to the defense closing argument. The rebuttal must be limited to a direct response to those matters raised in the defendant's closing argument.
- k. On the motion of the defendant, the court may permit the defendant to reply in surrebuttal if the court determines that the prosecution has made in its rebuttal argument a misstatement of law or fact or a statement that is inflammatory or prejudicial. The surrebuttal must be limited to a direct response to the misstatement of law or fact or the inflammatory or prejudicial statement.
- l. At the conclusion of the arguments the court shall allow the parties an opportunity, outside the presence of the jury and on the record, to make any objections they may have to the content or manner of the other party's argument based upon existing law and to request curative instructions. This rule does not limit the right of any party under existing law to make appropriate objections and to seek curative instructions at any other time during the closing argument process.
- m. The court shall charge the jury.
- n. The jury shall retire for deliberation and, if possible, render a verdict.

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

Subd. 13. Substitution of Judge.

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

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

(3) Interest or Bias of Judge. No judge shall preside over a trial or other proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request.

(4) Notice to Remove. The defendant or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the party receives notice of which judge is to preside at the trial or hearing, but not later than the commencement of the trial or hearing. No notice to remove shall be effective against a judge who has already presided at the trial, Omnibus Hearing, or other evidentiary hearing of which the party had notice, except upon an affirmative showing of cause on the part of the judge. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

(5) Recusal. A judge without a motion may recuse himself or herself from presiding over a trial or other proceeding.

(6) Assignment of New Judge. Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Subd. 14. Exceptions.

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

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

Subd. 15. Evidence. In all trials the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules. Jurors shall not be permitted to submit questions to any witness, directly or through the court or counsel. If either party offers into evidence a videotape or audiotape exhibit, that party may also provide to the court a transcript of the proposed exhibit which will be made a part of the record.

Subd. 16. Interpreters. The court may appoint an interpreter of its own selection and may fix reasonable compensation for the interpreter. The compensation shall be paid out of funds provided by law. Qualified interpreters appointed by the court for any juror with a sensory disability may be present in the jury room to interpret while the jury is deliberating and voting.

Subd. 17. Motion for Judgment of Acquittal.

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

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

specifying its reasons for entering a judgment of acquittal.

(3) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 15 days after the jury is discharged or within such further time as the court may fix during the 15-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal, in which case the court shall make written findings specifying its reasons for entering a judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. Such a motion is not barred by defendant's failure to make a similar motion prior to the submission of the case to the jury.

Subd. 18. Instructions.

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

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

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

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

(5) Contents of Instructions. In charging the jury the court shall state all matters of

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

Subd. 19. Jury Deliberations and Verdict.

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

(2) **Jury Requests to Review Evidence.**

1. If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to re-examine the requested materials admitted into evidence.
2. The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(3) **Additional Instructions After Jury Retires.**

1. If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless: (a) the jury may be adequately informed by directing their attention to some portion of the original instructions; (b) the request concerns matters not in evidence or questions which do not pertain to the law of the case; or (c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.
2. The court need not give additional instructions beyond those specifically requested by the jury, but in its discretion the court may also give or repeat other instructions to avoid giving undue prominence to the requested instructions.
3. The court after notice to the prosecutor and defense counsel may recall the jury after it has retired and give any additional instructions as the court deems appropriate.

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

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

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

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

Rule 26.04 - Post-Verdict Motions

Subd. 1. New Trial.

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

1. If required in the interests of justice;
2. Irregularity in the proceedings of the court, jury, or on the part of the prosecution, or any order or abuse of discretion, whereby the defendant was deprived of a fair trial;
3. Misconduct of the jury or prosecution;
4. Accident or surprise which could not have been prevented by ordinary prudence;
5. Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
6. Errors of law occurring at the trial, and objected to at the time or, if no

objection is required by these rules, assigned in the motion;

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

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

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

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

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

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

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

Minnesota Rules of Evidence Rule 412 - Past Conduct of Victim of Certain Sex Offenses

(1) In a prosecution under Minnesota Statutes, sections [609.342](#) to [609.346](#), evidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in rule 412. Such evidence can be admissible only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the following circumstances:

(A) When consent of the victim is a defense in the case,
(i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue, relevant and material to the issue of consent; (ii) evidence of the victim's previous sexual conduct with the accused; or

(B) When the prosecution's case includes evidence of semen, pregnancy or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct, to show the source of the semen, pregnancy or disease.

(2) The accused may not offer evidence described in [rule 412 \(1\)](#) except pursuant to the following procedure:

(A) A motion shall be made by the accused prior to the trial, unless later for good cause shown, setting out with particularity the offer of proof of the evidence that the accused intends to offer, relative to the previous sexual conduct of the victim.

(B) If the court deems the offer of proof sufficient, the court shall order a hearing out of the presence of the jury, if any, and in such hearing shall allow the accused to make a full presentation of the offer of proof.

(C) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the accused regarding the previous sexual conduct of the victim is admissible under the provisions of rule [412 \(1\)](#) and that its probative value is not substantially outweighed by its inflammatory or prejudicial nature, the court shall make an order stating the extent to which such evidence is admissible. The accused may then offer evidence pursuant to the order of the court.

(D) If new information is discovered after the date of the hearing or during the course of trial, which may make evidence described in rule [412 \(1\)](#) admissible, the accused may make an offer of proof pursuant to rule [412 \(2\)](#), and the court shall hold an in camera hearing to

determine whether the proposed evidence is admissible by the standards herein.