Rule 26. Trial

26.01 Trial by Jury or by the Court

Subd. 1. Trial by Jury.

(1) Right to Jury Trial.

(a) Offenses Punishable by Incarceration. A defendant has a right to a jury trial for any offense punishable by incarceration. All trials must 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 must be to the court.

(2) Waiver of Trial by Jury.

(a) Waiver on the Issue of Guilt. The defendant, with the approval of the court, may waive a jury trial on the issue of guilt provided the defendant does so personally, in writing or on 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 on the Issue of an Aggravated Sentence. Where the prosecutor seeks an aggravated sentence, the defendant, with the approval of the court, may waive a jury trial on the facts in support of an aggravated sentence provided the defendant does so personally, in writing or on the record in open court, after being advised by the court of the right to a trial by jury, and after having had an opportunity to consult with counsel.

(c) Waiver Necessitated by Prejudicial Publicity. The defendant must be permitted to waive a jury trial whenever the court determines:

(i) the defendant knowingly and voluntarily waived that right; and

(ii) reason exists to believe that, because of the dissemination of potentially prejudicial material, the waiver must be granted to assure a fair trial.

(3) Withdrawal of Jury-Trial Waiver. The defendant may withdraw the waiver of a jury trial any time before trial begins.

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

(5) Number Required for Verdict. The jury's verdict must be unanimous in all cases.

(6) Waiver of Unanimous Verdict. 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 fewer than that required by law or these rules. The court must not approve this stipulation unless the defendant waives this right personally in writing or on the record, after being advised by the court of the right to a verdict on the concurrence of the number of jurors specified by law.

Subd. 2. Trial Without a Jury.

(a) In a case tried without a jury, the court, within seven days after the completion of the trial, must make a general finding of guilty; not guilty; or if the applicable pleas have been made,

a general finding of not guilty by reason of mental illness or cognitive impairment, double jeopardy, or that Minnesota Statutes, section 609.035, bars the prosecution.

(b) The court, within seven days after making its general finding in felony and gross misdemeanor cases, must in addition make findings in writing of the essential facts.

(c) In misdemeanor and petty misdemeanor cases, findings must be made within seven days after the defendant has filed a notice of appeal.

(d) An opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum.

(e) If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.

Subd. 3. Trial on Stipulated Facts; Trial on Stipulated Evidence.

(a) The defendant and the prosecutor may agree that a determination of the defendant's guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.

(b) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), or subdivision 1(2)(b), or both, and must personally waive the following specific rights:

(1) to testify at trial;

(2) to have the prosecution witnesses testify in open court in the defendant's presence;

(3) to question those prosecution witnesses; and

(4) to require any favorable witnesses to testify for the defense in court.

(c) The agreement and the waiver must be in writing or be placed on the record.

(d) If the parties use this procedure to determine the issues of the defendant's guilt, and the existence of facts to support an aggravated sentence, the defendant must make a separate waiver of the above-listed rights as to each issue.

(e) On submission of the case entirely on stipulated facts, stipulated evidence, or both, the court must proceed under subdivision 2 of this rule as in any other trial to the court.

(f) If the court finds the defendant guilty based entirely on the stipulated facts, stipulated evidence, or both, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.

Subd. 4. Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling.

(a) When the parties agree that the court's ruling on a specified pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary, the following procedure must be used to preserve the issue for appellate review.

(b) The defendant must maintain the plea of not guilty.

(c) The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal.

(d) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under subdivision 1(2)(a), and must personally waive the rights specified in subdivision 3(b)(1)-(4).

(e) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.

(f) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.

(g) The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.

(h) After consideration of the stipulated evidence, the court must make an appropriate finding, and if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

(Amended effective October 1, 2017; amended effective September 1, 2018.)

26.02 Jury Selection

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

Subd. 2. Juror Information.

(1) Juror Lists.

(a) Jury Panel List With Demographic Information. Unless the court orders otherwise after a hearing, the court administrator must provide to the parties prior to trial a list of persons on the jury panel, including name, city as reported on the juror qualification questionnaire, occupation, education, children's ages, spouse's occupation, birth date, reported race and whether or not of Hispanic origin, gender, and marital status. The panel list must be filed after the trial has concluded, if not already filed, and must be maintained as nonpublic due to the presence of juror race.

(b) Random Juror List. The random juror list that is generated for the case, and may be used during voir dire to indicate strikes, must not include juror race. The random juror list must be filed after the trial has concluded, if not already filed, and must be made available to the public.

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

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

The findings of fact must be made in writing or on the record in open court. If ordered, jurors may be identified by number or other means to protect their identity. The court may restrict access to juror identity as long as necessary to protect the jurors. The court must minimize any prejudice the restriction has on the parties. The court's order must include specific direction on if and when juror identities must be made public.

(3) Supplemental Jury Questionnaires.

(a) Use of supplemental questionnaires. On the request of a party or on its own initiative, the court may order use of a jury questionnaire as a supplement to voir dire. The questionnaire must

be approved by the court, and must be sworn to in court or signed by the prospective juror under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

(b) Access to questionnaires. The questionnaire must advise jurors that their answers are part of the public record in the case. The court, the parties, and the questionnaire must not promise jurors that their responses will be kept nonpublic or confidential or that the questionnaire will be destroyed at the conclusion of the case.

(c) Copies and Filing. The court must provide copies of the completed questionnaires to the parties prior to trial. After the trial has concluded the supplemental questionnaires that were used as part of voir dire, including the questionnaires completed by prospective jurors who were questioned but not impaneled, must be filed in the court file and made available to the public. Supplemental questionnaires must not be filed if they were completed by prospective jurors who were not questioned during the voir dire proceedings, or if the case was resolved prior to a jury being impaneled and sworn.

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

Subd. 4. Voir Dire Examination.

(1) Purpose - How Made. The voir dire examination must be open to the public and the public must not be excluded unless the court has issued an order consistent with subdivision 4(4). The court must allow the parties to conduct voir dire examination to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges. The court must begin by identifying the parties and their respective counsel and by outlining the nature of the case. The court must question jurors about their qualifications to serve and may give the preliminary instructions in Rule 26.03, subd. 4. A verbatim record of the voir dire examination must be made.

(2) Sequestration of Jurors.

(a) Court's Discretion. The court may order that the examination of each juror take place outside of the presence of other chosen and prospective jurors, but with the defendant, parties, and public present. Regardless of the jury selection method used, the court has the discretion to permit jurors to be questioned about sensitive topics outside the presence of other chosen and prospective jurors, but in open court with the defendant, parties, and public present.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The prospective juror must be sworn in.

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

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

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

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

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

(a) Constitutional Requirements for Closure of the Courtroom During Voir Dire. The court must not close the courtroom during voir dire unless the closure complies with the constitutional rights to a fair and public trial. Examination of prospective jurors outside the presence of other chosen and prospective jurors, but with the defendant, parties, and public present, is not a courtroom closure. If the court orders the closure of any part of voir dire, that part of voir dire must be conducted on the record with counsel and the defendant present. The court must immediately reopen the proceedings to the public after the part of voir dire that was ordered to be conducted with the public excluded has concluded.

(b) Findings of Fact and Order. Any order excluding the public from a part of voir dire must be issued in writing or on the record. The court must set forth the reasons for the order, including specific findings adequate to support the closure. The order must address any possible alternatives to closure and explain why the alternatives are inadequate.

Subd. 5. Challenge for Cause.

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

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

2. A felony conviction unless the juror's civil right to vote has been restored.

3. The lack of any qualification under law.

4. The juror is unable to render satisfactory jury service, with reasonable disability accommodations if necessary.

5. A known relationship by blood or marriage to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.

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

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

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

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

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

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

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

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

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

Subd. 7. Objections to Peremptory Challenges.

(1) Rule Purpose. The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race, ethnicity, or gender.

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

(3) Process and Determination.

(a) Upon objection to the exercise of a peremptory challenge under this rule, the party exercising the peremptory challenge must articulate the reasons that the peremptory challenge has been exercised.

(b) The court must give the objecting party an opportunity to respond.

(c) The court must then evaluate the reasons given to justify the peremptory challenge based on the totality of the circumstances. In making its determination, the court must consider the following:

(i) the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it;

(ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror against whom the peremptory challenge was used in contrast to other jurors;

(iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(iv) the reason articulated by the party is commonly associated with the disproportionate exclusion of a particular race, ethnicity, or gender, such as:

(a) having prior contact with or a distrust of law enforcement;

(b) living in a high-crime area;

(c) not being a native English speaker; or

(d) having a close relationship with people who have been stopped, arrested, charged, or convicted of a crime; and

(v) whether the party has used peremptory challenges disproportionately against a particular race, ethnicity, or gender in the present case or in past cases.

The court may consider other circumstances it deems relevant in evaluating the reasons given to justify the peremptory challenge.

(d) If the court determines that race, ethnicity, or gender could reasonably be viewed as a factor in the use of the peremptory challenge, then the court must sustain the objection and deny the peremptory challenge.

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

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

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

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

a. To the panel.

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

c. Peremptory challenge to an individual prospective juror.

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

(Amended effective September 1, 2011; amended effective March 1, 2025; amended effective July 1, 2025; amended effective May 1, 2026.)

26.03 Procedures During Trial

Subd. 1. Defendant's Presence.

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

(a) jury selection;

(b) opening statements;

(c) presentation of evidence;

(d) closing argument;

(e) jury instructions;

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

(g) the verdict;

(h) sentencing.

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

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

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

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

(3) Presence Not Required.

1. Corporations. A corporation may appear by counsel.

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

3. Gross Misdemeanors. In gross misdemeanor cases, the court may, on the defendant's motion, excuse the defendant's presence except at trial.

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

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

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

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

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

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

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

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

Subd. 3. Media Access and Courtroom Decorum.

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

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

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

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

(a) burden of proof;

(b) presumption of innocence;

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

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

(e) rules applicable to opinion evidence;

(f) elements of the offense;

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

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

Subd. 5. Jury Sequestration.

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

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

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

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

Subd. 6. Exclusion of the Public From Hearings or Arguments Outside the Presence of the Jury. The following rules govern orders restricting public access to portions of the trial conducted

outside the presence of the jury or restricting access to trial transcripts, or an order arising from a closed portion of the trial.

(1) Grounds for Exclusion of Public.

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 11. View by Jury.

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

b. At the viewing:

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

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

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

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

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

Subd. 12. Order of Jury Trial.

a. The jury is selected and sworn.

b. The court may deliver preliminary jury instructions.

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

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

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

f. The defendant may offer evidence in defense.

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

h. The prosecutor may make a closing argument.

i. The defendant may make a closing argument.

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

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

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

m. The court instructs the jury.

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

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

Subd. 14. Substitution of Judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

If either party offers an audio or video recording, that party must not be required by the court to offer or provide a transcript of the recording as a prerequisite to admissibility. If the party provides a transcript of the evidence, and the court admits the transcript as an illustrative exhibit, the transcript becomes part of the record, used for illustrative purposes with the exhibit only. The court reporter must not transcribe video or audio evidence.

Subd. 17. Interpreters. The court must appoint and compensate interpreters as provided under Rule 8 of the General Rules of Practice for District Courts. Interpreters may be appointed and be present during deliberations for a juror with a sensory disability.

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

(1) Before Deliberations.

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

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

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

(3) After Verdict or Discharge.

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

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

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

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

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

Subd. 19. Instructions.

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

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

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

(4) Objections.

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

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

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

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

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

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

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

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

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

Subd. 20. Jury Deliberations and Verdict.

(1) Materials Allowed in Jury Room. Except as provided in this rule, the court must permit received exhibits or copies into the jury room including audio or video exhibits. The court may exclude audio or video exhibits from the jury room under the following circumstances: (a) if the court determines that allowing the exhibits into the jury room is not feasible, or (b) a party objects that allowing the exhibits into the jury room will result in prejudice to the party and the court makes a determination that the party is likely to experience prejudice. The court must not permit into the jury room depositions admitted in lieu of live testimony, or audio and video exhibits that contain oral statements that would unfairly deemphasize live testimony. The court may permit a copy of jury instructions into the jury room.

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

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

(b) Any jury review of depositions admitted in lieu of testimony, and audio or video exhibits not permitted in the jury room under paragraph (1) of this rule, must occur in open court. The court must instruct the jury to suspend deliberations during the review.

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

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

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

(a) The court may give additional instructions.

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

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

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

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

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

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

(5) Polling the Jury.

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

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

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

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

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

(Amended effective September 1, 2011; amended effective August 1, 2012; amended effective March 1, 2020; amended effective July 3, 2023; amended effective July 1, 2026.)

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)

Comment - Rule 26

Rule 26.01, subd. 1(1) (Right to Jury Trial). In cases of felonies and gross misdemeanors, the defendant has the right to a jury trial under Minnesota Constitution, article I, section 6, which guarantees the right to jury trial in "all criminal prosecutions." The term "criminal prosecution" includes prosecutions for all crimes defined by Minnesota Statutes, section 609.02. See Peterson v. Peterson, 278 Minn. 275, 281, 153 N.W.2d 825, 830 (1967); State v. Ketterer, 248 Minn. 173, 176, 79 N.W.2d 136, 139 (1956). The defendant's right to jury trial for offenses punishable by more than six months imprisonment is also guaranteed by the Fourteenth and Sixth Amendments to the United States Constitution. Duncan v. Louisiana, 391 U.S. 145, 159 (1968); Baldwin v. New York, 399 U.S. 66, 69 (1970).

Since misdemeanors in Minnesota are punishable by no more than 90 days of incarceration or a fine or both, Minnesota Statutes, section 609.03, clause 3, no federal constitutional right exists to a jury trial on a misdemeanor. However, a state constitutional right to a jury trial exists in any prosecution for the violation of a misdemeanor statute punishable by incarceration. See Minnesota Constitution, article I, section 6, as interpreted in State v. Hoben, 256 Minn. 436, 444, 98 N.W.2d 813, 819 (1959).

Rule 26.01, subd. 1(2)(a) establishes the procedure for waiver of the right to trial by jury on the issue of guilt. A jury waiver must be knowing, intelligent, and voluntary. State v. Ross, 472 N.W.2d 651, 653-54 (Minn. 1991). "The focus of [an] inquiry [regarding a jury waiver] is on whether the defendant understands the basic elements of a jury trial." Id. at 654. The Minnesota Supreme Court has recommended the following guidelines: "the defendant should be told that a [felony] jury... is composed of 12 members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous, and that, if the defendant waives a jury, the judge alone will decide guilt or innocence." Id.

Rule 26.01, subd. 1(2)(b) establishes the procedure for waiver of the right to trial by jury on the issue of an aggravated sentence. See generally Blakely v. Washington, 542 U.S. 296 (2004) and State v. Shattuck, 704 N.W.2d 131 (Minn. 2005) as to the constitutional limitations on imposing aggravated sentences based on findings of fact beyond the elements of the offense and the conviction history. Also, see Rules 1.04(d), 7.03, and 11.04, subd. 2 and the comments to those rules. Whether a defendant has waived or demanded a jury trial on the issue of guilt, that defendant may still have a jury trial on the issue of an aggravated sentence, and a valid waiver under Rule 26.01, subd. 1(2)(b) must be made before an aggravated sentence may be imposed based on findings not made by jury trial. The requirements for a valid jury waiver are discussed in the comment regarding Rule 26.01, subd. 1(2)(a).

Rule 26.01, subd. 1(3) (Withdrawal of Jury-Trial Waiver) provides that waiver of jury trial may be withdrawn before commencement of trial. Trial begins when jeopardy attaches.

Rule 26.01, subd. 3 (Trial on Stipulated Facts; Trial on Stipulated Evidence) previously applied only to court trials on stipulated facts. In Dereje v. State, 837 N.W.2d 714 (Minn. 2013), the Minnesota Supreme Court clarified that Rule 26.01, subd. 3, does not apply to a court trial on a stipulated body of evidence. Rule 26.01, subd. 3, was amended in 2017 to apply to court trials on stipulated evidence, as well as court trials on stipulated facts. A defendant who agrees to a court trial on stipulated facts, stipulated evidence, or both, must acknowledge and personally waive the rights listed in Rule 26.01, subd. 3(b)(1)-(4).

The rules do not permit conditional pleas of guilty by which the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. Rule 26.01, subd. 4 implements the procedure authorized by State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980), which

allows a defendant to stipulate to the prosecution's case to obtain review of a pretrial ruling. Rule 26.01, subd.4, "replaced Lothenbach as the method for preserving a dispositive pretrial issue for appellate review in a criminal case." State v. Myhre, 875 N.W.2d 799, 802 (Minn. 2016). Rule 26.01, subd. 4, limits appellate review to the dispositive pretrial issue. Rule 26.01, subd. 3, should be used if there is no pretrial ruling dispositive of the case, and if the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence. See State v. Busse, 644 N.W.2d 79, 89 (Minn. 2002).

The phrase in the first sentence of Rule 26.01, subd. 4(a) - "or that the ruling makes a contested trial unnecessary" - recognizes that a pretrial ruling will not always be dispositive of the entire case, but that a successful appeal of the pretrial issue could nonetheless make a trial unnecessary, such as in a DWI case where the only issue is the validity of one or more qualified prior impaired driving incidents as a charge enhancement. See, e.g., State v. Sandmoen, 390 N.W.2d 419, 423 (Minn. App. 1986). The parties could agree that if the defendant prevailed on appeal, the defendant would still have a conviction for an unenhanced DWI offense. Where a conviction for some offense is supportable regardless of the outcome of the appeal, but a contested trial would serve no purpose, Rule 26.01, subd. 4 could be used.

On a finding under Rule 26.02, subd. 2(2) that there is strong reason to believe dissemination of juror information poses a threat to juror safety or impartiality, the court may enter an order that information regarding identity, including names, telephone numbers, and addresses of prospective jurors be withheld from the public, parties, and counsel. See State v. Bowles, 530 N.W.2d 521, 530-31 (Minn. 1995); State v. McKenzie, 532 N.W.2d 210, 219 (Minn. 1995). The restrictions ordered by the court may extend through trial and beyond as necessary to protect the safety and impartiality interests involved. To protect the identity of jurors and prospective jurors, the court may order that they be identified by number or other method and may prohibit pictures or sketches in the courtroom. The court's decision will be reviewed under an abuse of discretion standard.

The court must recognize that not every trial where there is a threat to jurors' impartiality will require restriction on access to information about jurors. The decision to restrict access to information on jurors must be made in the light of reason, principle, and common sense.

In ensuring that restriction on the parties' access to information about the jurors does not have a prejudicial effect on the defendant, the court must take reasonable precautions to minimize the potential for prejudice. The court must allow voir dire on the effect that restricting access to juror identification may have on the impartiality of the jurors. The court should also instruct the jurors that the jury selection procedures do not in any way suggest the defendant's guilt.

The use of a written jury questionnaire (Rule 26.02, subd. 2(3)) has proved to be a useful tool in obtaining information from prospective jurors in criminal cases. The written questionnaire provided in the Criminal Forms following these rules includes generally non-sensitive questions relevant to jury selection in any criminal case. See Form 50 for the Jury Questionnaire. Additionally the court on its own initiative or on request of counsel may submit to the prospective jurors as part of the questionnaire other questions that might be helpful based on the particular case to be tried.

Once the panel of prospective jurors for a particular case has been determined, the judge or court personnel will instruct the panel on the use of the questionnaire. The preamble at the beginning of the Jury Questionnaire (Form 50) provides the basic information to the prospective jurors. On completion of the questionnaire, the court must make the questionnaire available to counsel for use in the jury selection process. The questionnaire may be sworn to either when signed or when the prospective juror appears in court at the time of the voir dire examination. Because of the information contained in the questionnaire, counsel will not need to expend court time on this information, but can move directly to follow-up questions on particular information already available

in the questionnaire. However, the written questionnaire is intended only to supplement and not to substitute for the oral voir dire examination provided for by Rule 26.02, subd. 4.

The use and retention of jury questionnaires have been subject to a variety of practices. This rule provides that the questionnaire is a part of the jury selection process and part of the record for appeal and reflects current law. As such, the questionnaires should be preserved as part of the court record of the case. See Rule 26.02, subd. 2(2) as to restricting public access to the names, addresses, telephone numbers, and other identifying information concerning jurors and prospective jurors when the court determines that an anonymous jury is necessary.

It is recognized that the idea of the privacy of the questionnaire adds to the candor and honesty of the responses of the prospective jurors. However, in light of other applicable laws and the fact that the questionnaire is part of the record in the case, prospective jurors cannot be told that the questionnaire is confidential or will be destroyed at the conclusion of the case.

Jury selection is a part of the criminal trial record, which is presumed to be open to the public. Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I), 464 U.S. 501, 505 (1984). The use of a jury questionnaire as part of jury selection is also a part of the open proceeding and therefore the public and the media have a right of access to that information in the usual case. See, e.g., Lesher Commc'ns, Inc. v. Superior Court of Contra Costa County, 224 Cal. App. 3d 774, 779 (1990).

The provision of Rule 26.02, subd. 4(1) governing the purpose for which voir dire examination must be conducted and the provision for initiation of the examination by the judge is taken from ABA Standards, Trial by Jury, 2.4. The court has the right and the duty to assure that the inquiries by the parties during the voir dire examination are "reasonable." The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper. See State v. Greer, 635 N.W.2d 82, 87 (Minn. 2001) (holding no error in district court's restrictions on voir dire); State v. Bauer, 189 Minn. 280, 282, 249 N.W. 40, 41 (1933). However, the Minnesota Supreme Court's Task Force on Racial Bias in the Judicial System recommends in its Final Report, dated May 1993, that during voir dire lawyers should be given ample opportunity to inquire of jurors as to racial bias.

The purpose of Rule 26.02, subd. 4(3) is to achieve uniformity in the order of drawing, examination, and challenge of jurors, and also to provide a limited number of alternatives that may be followed, in the court's discretion. Hence, a uniform rule (26.02, subd. 4(3)(b)) is prescribed, which is to be followed unless the court orders the alternative. Rule 26.02, subd. 4 (3)(c). An exception is that in cases of first-degree murder, Rule 26.02, subd. 4(3)(d) is to be preferred unless otherwise ordered by the court.

Rule 26.02, subd. 4(3)(b) is the rule to be followed unless the court orders otherwise and substantially adopts the method used in civil cases, so that in a criminal case 20 members of the jury panel are first drawn for a 12-person jury. See Minnesota Statutes, section 546.10; Minn. R. Civ. P. 48. After each party has exercised challenges for cause, commencing with the defendant, they exercise their peremptory challenges alternately, commencing with the defendant. If all peremptory challenges are not exercised, the jury must be selected from the remaining prospective jurors in the order in which they were called.

The interpreter requirement in Rule 26.03, subd. 1(1) derives from Rule 8 of the General Rules of Practice for the District Courts and Minnesota Statutes, sections 611.30 to 611.34.

A defendant's refusal to wear non-jail attire waives the provision in Rule 26.03, subd. 2 (Custody and Restraint of Defendants and Witnesses) and is not grounds for delaying the trial. A list of

factors relevant to the decision to employ restraints is found in State v. Shoen, 578 N.W.2d 708, 713 (Minn. 1998).

Rule 26.03, subd. 6 (Exclusion of Public From Hearings or Arguments Outside the Presence of the Jury) reflects Minneapolis Star and Tribune Company v. Kammeyer, 341 N.W.2d 550, 559-60 (Minn. 1983), which established similar procedures for excluding the public from pretrial hearings. See the comment to Rule 25.01 concerning those procedures.

Rule 26.03, subd. 12 (Order of Jury Trial) substantially continues the order of trial under existing practice. See Minnesota Statutes, section 546.11. The order of closing argument, under sections "h," "i," "j," and "k" of this rule reflects a change. The prosecution argues first, then the defense. The prosecution is then automatically entitled to rebuttal argument. However, this argument must be true rebuttal and is limited to directly responding to matters raised in the defendant's closing argument. Allowance of the rebuttal argument to the prosecution should result in a more efficient and less confusing presentation to the jury. The prosecution will need to address only those defenses actually raised by the defendant rather than guessing, perhaps wrongly, about those defenses. In the event that the prosecution engages in improper rebuttal, paragraph "k" of the rule provides, upon motion, for a limited right of rebuttal to the defendant to address misstatements of law or fact and any inflammatory or prejudicial statements. The court has the inherent power and duty to assure that any rebuttal or surrebuttal arguments stay within the limits of the rule and do not simply repeat matters from the earlier arguments or address matters not raised in earlier arguments. It is the responsibility of the court to ensure that final argument to the jury is kept within proper bounds. ABA Standards for Criminal Justice: Prosecution Function and Defense Function, standards 3-5.8 and 4-7.7 (3d ed. 1993). If the argument is sufficiently improper, the trial judge should intervene, even without objection from opposing counsel. See State v. Salitros, 499 N.W.2d 815, 817 (Minn. 1993); State v. White, 295 Minn. 217, 223, 203 N.W.2d 852, 857 (1973).

Under Rule 26.03, subd. 14, a party is not foreclosed from later serving and filing a notice to remove a judge who simply presided at an appearance under Rule 5 or Rule 8 in the case. Also under that rule, a judge should disqualify himself or herself "whenever the judge has any doubt as to his or her ability to preside impartially or whenever his or her impartiality reasonably might be questioned." ABA Standards for Criminal Justice: Special Functions of the Trial Judge, standard 6-1.9 (3d ed. 2000).

Rule 26.03, subd. 16 (Evidence) leaves to the Minnesota Rules of Evidence the issues of the admissibility of evidence and the competency of witnesses except as otherwise provided in these rules. As to the use of a deposition at a criminal trial, Rule 21.06 controls rather than the Minnesota Rules of Evidence if there is any conflict between them. See Rule 802 and the comments to Rule 804 in the Minnesota Rules of Evidence. The prohibition in Rule 26.03, subd. 16 against jurors submitting questions to witnesses is taken from State v. Costello, 646 N.W.2d 204, 214 (Minn. 2002).

Rule 26.03, subd. 16 provides that any party offering a videotape or audiotape exhibit may also provide to the court a transcript of the tape. This rule does not govern whether any such transcript is admissible as evidence. That issue is governed by Article 10 of the Minnesota Rules of Evidence. However, upon an appeal of the proceedings, the transcript of the exhibit will be part of the record if the other party stipulates to the accuracy of the tape transcript as provided in Rule 28.02, subd. 9.

The provision in Rule 26.03, subd. 17 (Interpreters) allowing qualified interpreters for any juror with a sensory disability to be present in the jury room during deliberations and voting was added to the rule to conform with Minnesota Statutes, section 593.32, and Rule 809 of the Jury Management Rules in the General Rules of Practice for District Courts, which prohibit exclusion

from jury service for certain reasons including sensory disability. Further, this provision allows the court to make reasonable accommodation for such jurors under the Americans with Disabilities Act. 42 U.S.C. section 12101 et seq. Caselaw holding that the presence of an alternate juror during deliberations is considered to be presumptively prejudicial - e.g., State v. Crandall, 452 N.W.2d 708, 711 (Minn. App. 1990) - would not apply to such qualified interpreters present during deliberations. As to an interpreter's duties of confidentiality and to refrain from public comment, see respectively Canons 5 and 6 of the Code of Professional Responsibility for Interpreters in the Minnesota State Court System.

A defendant is entitled to a jury determination of any facts beyond the elements of the offense or conviction history that might be used to aggravate the sentence. Blakely v. Washington, 542 U.S. 296, 301 (2004); State v. Shattuck, 704 N.W.2d 131, 135 (Minn. 2005). If such a trial is held, Rule 26.03, subd. 18 provides that the defendant may challenge the sufficiency of the evidence presented.

Rule 26.03, subd. 19(7) (Verdict Forms) requires that where aggravated sentence issues are presented to a jury, the court shall submit the issues to the jury by special interrogatory. For a sample form for that purpose see CRIMJIG 8.01 of the Minnesota Criminal Jury Instruction Guide. When that is done, Rule 26.03, subd. 20(5) permits any of the parties to request that the jury be polled as to their answers.

Rule 26.03, subd. 20(1) requires the court to permit certain audio or video exhibits into the jury room when appropriate and when feasible. It is critical that due care be taken by the parties when preparing and submitting audio/video exhibits and the equipment that will be used by the jury for playback in the deliberation room. The highest technical standards and security protocol must be applied to ensure that the exhibits and playback equipment do not contain or allow access to any unadmitted exhibits, the internet, or any other improper material. The judge should make a record that the parties have inspected and approve the exhibits and the equipment and agree regarding the items to be sent back with the jury. The judge should address any objections or concerns. The judge should also make clear what will be returned and what will and will not be preserved by the court or provided to a reviewing court in the event of an appeal.

Under Rule 26.03, subd. 20(4) (Deadlocked Jury), the kind of instruction that may be given to a deadlocked jury is left to judicial decision. In State v. Buggs, 581 N.W.2d 329, 338 (Minn. 1998), the Supreme Court suggested the risk of error in jury instructions can be significantly reduced if the trial court uses CRIMJIG 3.04 when the jury asks for further instruction.

Rule 26.03, subd. 20(6) (Verdict Impeachment) adopts the procedure outlined in Schwartz v. Minneapolis Suburban Bus Company, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960).

Acceptance of a partial verdict under Rule 26.03, subd. 20(7) (Partial Verdicts) may bar further prosecution of any counts over which the jury has deadlocked. See Minnesota Statutes, section 609.035, subdivision 1.