

**Rule 1. Scope and Purpose of the Rules****Rule 1.01 Scope and Application**

These rules govern the procedure in prosecutions for felonies, gross misdemeanors, misdemeanors, and petty misdemeanors in the district courts in the State of Minnesota.

**Rule 1.02 Purpose and Construction**

These rules are intended to provide a just determination of criminal proceedings, and ensure a simple and fair procedure that eliminates unjustified expense and delay. The rules must be applied without discrimination based upon race, color, creed, religion, national origin, sex, marital status, public-assistance status, disability, including disability in communication, sexual orientation, or age.

**Rule 1.03 Local Rules by District Court**

A court may recommend local rules governing its practice if they do not conflict with these rules or with the General Rules of Practice for the District Courts. Local rules become effective only if ordered by the Supreme Court.

**Rule 1.04 Definitions**

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

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

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

**(c) Tab Charge.** A "tab charge" is a charging document filed by an officer at a place of detention, or an amendment of the charges on the record by the prosecutor, that includes a reference to the statute, rule, regulation, ordinance, or other provision of law the defendant is alleged to have violated. A tab charge is not synonymous with "citation" as defined in paragraph (e).

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

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

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

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

(Amended effective January 1, 2012.)

**Rule 1.05 Use of Interactive Video Teleconference in Criminal Proceedings****Subd. 1. Definitions.**

(1) ITV. "ITV" refers to interactive video teleconference.

(2) Terminal Site. A "terminal site" is any location where ITV is used for any part of a court proceeding.

(3) Venue County. The "venue county" is the county where pleadings are filed and hearings are held under current court procedures.

(4) District. The "district" is the judicial district in which the venue county is located.

**Subd. 2. Appearance; How Made.** Appearances in proceedings governed by the Minnesota Rules of Criminal Procedure must be made in person except as authorized to be made by ITV in this rule, by written petition in Rules 14.02, subd. 2 and 15.03, subd. 2, and by phone in Rule 26.03, subd. 1(3)5.

**Subd. 3. Permissible Use of ITV.** ITV may be used to conduct the proceedings specified in subdivisions 4 and 5:

(1) When no judge is available in the venue county;

(2) When the defendant is in custody and is being held in a location other than the venue county; or

(3) In the interests of justice.

**Subd. 4. Felony, Gross Misdemeanor, or Misdemeanor Proceedings.**

(1) Subject to the requirements in subdivisions 6 and 7, ITV may be used to conduct the following felony, gross misdemeanor, or misdemeanor proceedings:

(a) Rule 5 or Rule 6 hearings;

(b) Rule 8 hearings;

(c) Rule 11 hearings for the purpose of waiving an omnibus hearing;

(d) Plea;

(e) Sentencing;

(f) Probation revocation hearings;

(g) Any hearing for which the defendant's personal presence is not required under Rules 14.02, subd. 2 and 26.03, subd. 1(3).

(2) ITV cannot be used to conduct a trial, contested omnibus hearing, contested pretrial hearing, or any other evidentiary matter except as provided in this rule.

**Subd. 5. Petty Misdemeanor and Regulatory or Administrative Criminal Offenses.** A defendant may appear by ITV for all hearings, including trials, related to petty misdemeanors and regulatory or administrative criminal offenses not punishable by imprisonment.

**Subd. 6. Request for In-Person Hearing; Consent Requirements.**

(1) Rule 5 or Rule 6 Hearings. When a defendant appears before the court by ITV for a Rule 5 or Rule 6 hearing, the defendant may request to appear in person before a judge. If the request is made, the hearing will be held within three business days of the ITV hearing and is deemed a continuance of the ITV hearing.

(2) Other Hearings; Consent. In all proceedings other than a Rule 5 or Rule 6 hearing, prior to the commencement of the hearing, the defendant, defense attorney, prosecutor, and judge must

consent to holding the hearing by ITV. Otherwise, an in-person court appearance for that hearing must be scheduled to be held within the time limits as otherwise provided by these rules or other law.

**Subd. 7. Location of Participants.**

(1) Defendant's Attorney. The defendant and the defendant's attorney must be present at the same terminal site unless unusual or emergency circumstances specifically related to the defendant's case exist, or the defendant and the defendant's attorney consent to being at different terminal sites, and only if all parties agree on the record and the court approves. The defendant and his attorney must be present at the same terminal site in:

- (a) felony plea proceedings when the defendant is entering a guilty plea; or
- (b) felony sentencing proceedings.

(2) Prosecutor. Subject to paragraph (4), the prosecutor may appear from any terminal site.

(3) Judge. Subject to paragraph (4), the judge may appear from any terminal site.

(4) Defendant's Attorney or Prosecutor at Same Terminal Site as Judge. When the right to counsel applies, ITV cannot be used in a situation in which only the defense attorney or prosecutor is physically present before the judge unless all parties agree on the record.

(5) Witnesses, Victims, Other Persons. Witnesses, victims, and other persons may be located at any terminal site.

**Subd. 8. Consolidated Proceeding for Charges Pending in Multiple Counties.**

(1) Consolidated Proceeding. When a defendant has pending charges in more than one county, the charges may be heard in a consolidated proceeding conducted by ITV.

(2) Judge. The proceedings shall be heard by a judge in the county in which the most serious offense is pending, unless the parties agree otherwise.

(3) Prosecutor. Each prosecutor having authority to charge the offenses included in the proceeding may attend the hearing in person or by ITV or waive appearance. Any prosecutor authorized to appear on behalf of another prosecutor in the ITV proceeding must make an oral record of the authorization.

(4) Defense Attorney. If the defendant is represented by multiple defense attorneys, each attorney may choose to attend the hearing in person or by ITV or assign responsibility as the attorney of record to one attorney. Any defense attorney appearing in the ITV proceeding must make an oral record of representation.

**Subd. 9. Witness Testimony.** Witnesses may testify by ITV if the court and all parties agree.

**Subd. 10. Proceedings; Record; Decorum.**

(1) Where Conducted. When an ITV proceeding is conducted, the terminal site(s) for the defendant, defense attorney, prosecutor, and judge must be located in a courtroom unless otherwise approved by the court prior to the hearing. The terminal site(s) for witnesses, victims, or other persons may be located in a courtroom or another suitable room reasonably accessible to the public as approved by the judge conducting the proceeding.

(2) Effect of ITV Hearing. Regardless of the physical location of any party to the ITV hearing, any waiver, stipulation, motion, objection, order, or any other action taken by the court or a party at an ITV hearing has the same effect as if done in person.

(3) Defendant Right to Counsel. The court must ensure that the defendant has adequate opportunity to confidentially communicate with counsel, including, where appropriate, suspension of the audio transmission and recording or allowing counsel to leave the conference table to communicate with the defendant in private.

(4) Record. The court administrator of the venue county must maintain court records as if the proceeding were heard in person. If the hearing requires a written record, a court reporter must be in simultaneous voice communication with all ITV terminal sites, and must make the appropriate verbatim record of the proceeding as if heard in person. No recording of the ITV proceeding other than the recording made as the official court record is permitted.

(5) Decorum. Courtroom decorum during ITV hearings must conform to the extent possible to that required during traditional court proceedings. This may include the presence of one or more sheriff's personnel at any ITV site.

**Subd. 11. Administrative Procedures.** Administrative procedures for conducting ITV hearings are governed by the General Rules of Practice.

(Amended effective July 1, 2010; amended effective August 1, 2012; amended effective October 1, 2017.)

### **Rule 1.06 Use of Electronic Filing for Charging Documents**

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

**Subd. 2. Authorization.** E-filing must be used to file all citations, tab charges, and complaints.

#### **Subd. 3. Signatures.**

(1) How Made. All signatures required under these rules must be affixed electronically, unless the e-filing technology is unavailable. If the document must be printed and manually signed, a printed copy must be filed with the court.

(2) Signature Standard. Electronic signatures may be affixed by any electronic means.

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

**Subd. 4. Electronic Notarization.** If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically notarized in accordance with state law. The probable cause statement may be signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

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

needed equipment or utilize the electronic means authorized by the State Court Administration does not constitute unavailability.

(Amended effective July 15, 2010; amended effective July 1, 2015; amended effective October 1, 2016.)

### ***Comment - Rule 1***

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

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

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

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

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

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

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

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

*It is anticipated that if a complaint is commenced electronically, and the technology becomes unavailable due to a system failure, any actor in the chain (e.g., prosecutor or judge) may need to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint are valid. It is also anticipated that certain complaints and citations, including complaints filed by a prosecutor from a county other than the county of venue in a conflict case and complaints and citations filed by agencies without a federal Originating Agency Identification (ORI) number, must be filed on paper for the foreseeable future because the current e-filing system does not support electronic filing of those documents. The current e-filing system used for filing charging documents also does not support the creation and filing of an indictment; however, if a criminal case has already been initiated by the filing of a complaint, an indictment may be filed into that case by the prosecutor using the E-Filing system defined in Minnesota General Rules of Practice 14.*

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