Dated at _____ this _____ day of _____, _____.

_____
(official title)

FORM 2

ARREST WARRANT ON A COMPLAINT

State of Iowa
County of _____

Criminal Case No. _____

To any peace officer of the state:

Complaint upon oath or affirmation having been this day filed with me, charging that the crime (naming it) has been committed and accusing A_____ B_____ _____ thereof:

You are commanded forthwith to arrest the said A_____ _____ B_____ and bring such person before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate in this county, *without unnecessary delay.*

Dated at _____ this _____ day of _____, _____.

C_____ D_____
(with official title)

FORM 3

ARREST WARRANT AFTER INDICTMENT OR INFORMATION

State of Iowa
County of _____

Criminal Case No. _____

To any peace officer in the state:

An indictment (information) having been filed in the district court of said county on the _____ day of _____, _____, (the day on which the indictment (information) is filed) charging A. B. with the crime of (here designate the offense by the number of the statutory provision and name of the offense if it have one, or by a brief general description of it, substantially as in the indictment).

You are hereby commanded to arrest the said A. B. and bring such person before said court to answer said indictment.

Signed this _____ day of _____, _____.

(Seal) _____
Clerk or Judge

By order of the judge of the court.

There may be added to the above, "Let the defendant be admitted to bail in the amount of _____ dollars (or subject to other conditions endorsed on the warrant)."

If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take such person before a magistrate or the clerk of the district court in said county or in the county in which you arrest such person, that such person may give bail to answer the said indictment", and the clerk may make an endorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of _____ dollars" (the amount fixed by the judge).

FORM 4

ARREST WARRANT WHEN DEFENDANT FAILS TO APPEAR FOR SENTENCING

State of Iowa
County of _____

Criminal Case No. _____

To any peace officer in the state:

A_____ B_____,
having been duly convicted on the _____ day of _____, _____, in the district court of _____ County, of the crime of (here state the name of the offense and the statutory provision).

You are hereby commanded to arrest the said A_____ _____ B_____ and bring such person before said court for judgment.

Signed this _____ day of _____, _____.

_____
Clerk or Judge

FORM 5

BAIL BOND

State of Iowa
County of _____

Criminal Case No. _____

An indictment (or charge) having been found (or made) in

the district court (or other appropriate court) of the county of _____ on the _____ day of _____, _____, charging A_____ B_____ _____ with the crime of _____ (designating it as in the warrant, indictment, or complaint), and such person having been duly admitted to bail in the sum of _____ dollars:

We, A_____ B_____ and E_____ F_____, hereby undertake that the said A_____ B_____ shall appear at the _____ court of the county of _____, on the _____ day of _____, _____, and answer the said indictment (or charge), and submit to the orders and judgment of said court, and not depart without leave of same, or, if such person fail to perform either of these conditions, that such person will pay to the State of Iowa the sum of _____ (inserting the sum in which the defendant is admitted to bail).

A_____ B_____
E_____ F_____

Acknowledged before and accepted by me at _____, in the township of _____, in the county of _____ this _____ day of _____, _____.

G_____ H_____
(with official title)

FORM 6

ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL

State of Iowa
County of _____

Criminal Case No. _____

To the sheriff of the County of _____:

C_____ D_____, who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge such person from custody.

Dated at _____, in the township (town or city) of _____, in the county of _____, this _____ day of _____, _____.

K_____ L_____
(with official title)

FORM 7

ORDER FOR DISCHARGE OF DEFENDANT UPON BAIL: ANOTHER FORM

(For endorsement on warrant or order of commitment)

State of Iowa
County of _____

Criminal Case No. _____

To the officer (naming the officer and the officer's title, thus A_____ B_____, Sheriff of _____ County) having in custody C_____ _____ D_____ (naming him):

The defendant named in the within warrant of arrest (or order of commitment) now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge such person from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to _____ _____ (name and address of the appropriate district court clerk, or the court or magistrate who issued the warrant).

Dated at _____ this _____ day of _____, _____.

E_____ F_____
(with official title)

FORM 8

~~TRIAL INFORMATION~~

(also designated County Attorney's Information)

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF IOWA

vs. INFORMATION

A_____ B_____

Criminal Case No. _____

Comes now _____, as county attorney of _____ County, State of Iowa, and in the name and

by the authority of the State of Iowa accuses A_____ B_____ of the crime of (here insert the name of the offense, number of the statutory provision and whether felony or misdemeanor), committed as follows:

The said A_____ B_____, on or about the _____ day of _____, _____ (inserting the year) in the county of _____, and State of Iowa, did (here insert the acts or omissions constituting the offense).

_____
County Attorney

State of Iowa
County of _____ ss.

I, _____, being first duly sworn, do depose and say, that I have made full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

_____

Subscribed and sworn to by _____ before me, the undersigned, this _____ day of _____, _____.

_____
(Here insert title of official before whom verification is made.)

Upon the information shall be endorsed the following:

(a) A true information

_____
County Attorney

(b) Names of witnesses:

_____
_____
_____

(c) On this _____ day of _____, _____ being satisfied from the showing made herein that this cause should (or should not, as the case may be) be prosecuted by information, the same is approved (or disapproved and the charge is ordered submitted to the grand jury, as the case may be).

_____
Judge of District Court

(d) This information duly filed in the district court, this _____ day of _____, _____.

_____
(Clerk of the District Court of _____ County, State of Iowa)
By_____
Deputy Clerk

(e) Bail is hereby fixed on the within information in the sum of $_____.

_____
(Here insert official title of judge or clerk, as case may be)

FORM 9

GENERAL INDICTMENT FORM

IN THE DISTRICT COURT OF IOWA IN AND FOR _____ COUNTY

STATE OF IOWA

vs. INDICTMENT

A_____ B_____

Criminal Case No. _____

The grand jurors of the county of _____ accuse A_____ B_____ of (here state the offense and whether felony or misdemeanor) in violation of (here state by number the statutory section violated) and charge that the said A_____ B_____ on or about the _____ day of _____, _____, in the county of _____ and State of Iowa, (here briefly insert any particulars of the offense, such as the name of the victim in a criminal homicide case).

A true bill.

/s/_____
Foreman of grand jury

Names of witnesses:

_____

FORM 10

INDICTMENT

(short forms)

The following forms may be used in cases in which they may be applicable:

Abandoning Child: A.B. wrongfully abandoned C.D., a child (or a disabled person) who was in the custody of said A.B.

Arson: A.B. committed arson in the _____ degree upon (a dwelling) the property of C.D. (of a value exceeding $500) (thus endangering E.F.).

Assaults: A.B. assaulted C.D. while participating in (name felony) (thereby causing serious injury to C.D.); A.B. assaulted C.D. and thereby intentionally caused serious injury to C.D.; A.B. administered a harmful substance (name substance) to C.D.

Attempts: A.B. attempted to (state substantive offense).

Bigamy: A.B. committed bigamy by marrying C.D. while said A.B. had a living spouse, D.B.

Bomb threat: A.B. communicated a bomb threat to C.D.

Bribery: A.B. bribed C.D.; A.B. solicited (received) a bribe from C.D. (an elector) (an election official).

Burglary: A.B. committed burglary in the _____ degree upon the property of C.D. (briefly set out circumstances if first degree is charged; e.g., while carrying a dangerous weapon).

Carrying weapon: A.B. carried a concealed weapon; A.B. carried a (describe firearm) within the city limits of (name city); A.B. carried a handgun in a vehicle.

Compounding felony: A.B., knowing that C.D. had committed a felony, compounded that felony.

Conspiracy: A.B. conspired with C.D. to commit (state substantive offense) (a class _____ felony; a _____ misdemeanor).

Criminal mischief: A.B. committed criminal mischief in the _____ degree upon the property of (name owner).

Criminal trespass: A.B. committed criminal trespass upon the property of (name owner) (thus injuring C.D.) (causing more than $100 in damage).

Detention in brothel: A.B. detained C.D. in a brothel.

Disturbance: A.B. willfully disturbed (name body or agency).

Driving under suspension: A.B. operated a motor vehicle while his license was (under suspension) (revoked).

Escape: A.B. escaped from custody: A.B. permitted C.D. to escape from custody.

Extortion: A.B. committed extortion upon C.D.

False imprisonment: A.B. falsely imprisoned C.D.

False information: A.B., while attempting to purchase a handgun, falsely stated (set out false statement); A.B., on an application for a weapons permit, falsely stated (set out false statement).

False report of destructive substance: A.B. falsely reported a bomb to C.D.

False use of financial instrument: A.B. falsely used a financial instrument, to wit: (set out type of instrument).

Falsifying public documents: A.B. falsified public documents; A.B. wrongfully possessed a seal of (name agency).

Feticide: A.B. committed feticide by causing the death of the fetus of C.D.

Fraudulent practices: A.B. committed a fraudulent practice by (state briefly the fraudulent practice).

Furnishing controlled substance: A.B. furnished a controlled substance, to wit: (name controlled substance) to C.D., an inmate of (name institution); A.B. introduced a controlled substance, to wit: (name controlled substance) into (name institution).

Furnishing pornography to minor: A.B. furnished pornography to C.D., a minor.

Going armed with intent: A.B. went armed with intent.

Harassment of public officer: A.B. harassed C.D. (state title or position).

Homicide: A.B. committed homicide in the _____ degree,

resulting in the death of C.D.

Impersonating public official: A.B. falsely impersonated a public official.

Improper voting: A.B. improperly voted (knowing himself not to be qualified) (having already voted once in that election).

Incest: A.B. committed incest with C.D.

Indecent exposure: A.B. indecently exposed himself to C.D.

Insurrection: A.B., acting with C.D. and E.F., participated in an insurrection.

Kidnapping: A.B. committed kidnapping in the _____ degree by kidnapping C.D.

Lascivious acts with a child: A.B. committed lascivious acts with C.D., a child.

Malicious prosecution: A.B. maliciously caused (attempted to cause) the prosecution of C.D.

Nonsupport: A.B. wrongfully refused (or failed) to support C.D., whom A.B. was under a legal obligation to support.

Obstructing prosecution: A.B. obstructed the prosecution of C.D.

OMVUI: A.B. operated a motor vehicle while under the influence of drugs or intoxicants (having been convicted _____ times previously for the offense).

Operating vehicle without consent: A.B. operated C.D.'s vehicle without C.D.'s consent.

Perjury: A.B. committed perjury by testifying (set out substance of testimony).

Pimping: A.B. solicited C.D. as a patron for a prostitute; A.B. knowingly shared in the earnings of C.D., a prostitute; A.B. knowingly furnished a place to be used for prostitution.

Possession of burglary tools: A.B. possessed burglary tools.

Possession of explosive: A.B. possessed (name substance) with the intent to use it to commit a public offense.

Possession of offensive weapon: A.B. had unauthorized

possession of an offensive weapon, to wit: (describe weapon).

Prostitution: A.B. committed prostitution by offering his/her services for sale (or selling his or her services) as a partner in a sex act; A.B. purchased (or offered to purchase) C.D.'s services as a partner in a sex act.

Public display of offensive matter: A.B. publicly displayed offensive matter, to wit: (describe offensive matter).

Reckless endangerment: A.B. recklessly endangered human life or safety (thereby seriously injurying C.D.).

Reckless use of explosive: A.B. recklessly endangered the property or safety of C.D. by A.B.'s use of (name substance).

Riot: A.B., together with C.D. and E.F., participated in a riot.

Risking a catastrophe: A.B. caused (or risked) a catastrophe by: (state nature of activity).

Robbery: A.B. committed robbery in the _____ degree against C.D.

Sexual abuse: A.B. sexually abused C.D. in the _____ degree.

Solicitation: A.B. solicited C.D. to commit (state substantive offense solicited) (a felony) (an aggravated misdemeanor).

Suborning perjury: A.B. suborned C.D. to commit perjury.

Terrorism: A.B. committed terrorism.

Theft: A.B. committed theft in the _____ degree by taking property belonging to C.D. (set out circumstances such as value of property setting degree of theft).

Traps: A.B. set a trap (or spring gun).

A similar short form indictment may be used for offenses not appearing in this table, provided it complies with the requirements of rule four (4), subsection seven (7), Iowa Rules of Criminal Procedure.

Sec. 1302. NEW SECTION. TRIAL OF SIMPLE MISDEMEANORS.

Rule 32. SCOPE. The rules set forth in this section shall apply to trials of simple misdemeanors, and attendant proceedings and to appeals from conviction in such cases.

Rule 33. APPLICABILITY OF DISTRICT COURT RULES. Procedures not provided for herein shall be governed by the provisions of these rules which are by their nature applicable relating to trial of indictable offenses, and by the statutes of the state of Iowa.

Rule 34. TO WHOM TRIED. Judicial magistrates and district associate judges must hear, try and determine all simple misdemeanors. District judges may transfer any simple misdemeanors pending before them to the nearest judicial magistrate or district associate judge.

Rule 35. THE CHARGE. Prosecutions for simple misdemeanors must be commenced by filing a subscribed and sworn to complaint with a magistrate or district court clerk or the clerk's deputy.

Rule 36. CONTENTS OF THE COMPLAINT. The complaint shall contain:

1. The name of the county and of the court where the complaint is filed.

2. The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.

3. A brief and concise statement of the act or acts constituting the offense, including the time and place of its commission as near as may be, and identifying by number the provision of law alleged to be violated.

4. The provisions of section seven hundred sixty-nine point six (769.6) of the Code shall be applicable to the prosecution before a magistrate of cases within the magistrate's jurisdiction.

Rule 37. FILING OF COMPLAINT. The magistrate or district court clerk or the clerk's deputy must file the complaint and mark thereon the time of filing the same.

Rule 38. WARRANT OF ARREST. Immediately upon filing the complaint, the magistrate or district court clerk or the clerk's deputy may issue a warrant of arrest or may issue a citation instead of a warrant for arrest and deliver it to a peace officer.

Rule 39. ARREST. The officer who receives the warrant shall arrest the defendant and bring the defendant before the magistrate without unnecessary delay or serve that citation in the manner provided in chapter two (2), division five (5) of this Act.

Rule 40. PROSECUTION OF CORPORATIONS. In prosecutions against corporations the corporation may be proceeded against by summons as set forth in division seven (VII) of this chapter.

Rule 41. APPEARANCE OF DEFENDANT. When the defendant first appears, the charge against the defendant must be distinctly read to him or her, and a copy given the defendant, and the defendant shall be asked whether he or she is charged under his or her right name. If the defendant objects that he or she is wrongly named in the complaint, the defendant must give his or her right name, and if the defendant refuses to do so, or does not object that he or she is wrongly named, the magistrate shall make an entry thereof in his or her docket, and the defendant is thereafter precluded from making any such objection.

Rule 42. RIGHTS OF DEFENDANT. The court shall inform the defendant:

1. Of the defendant's right to counsel.

2. Of the circumstances under which the defendant might secure pretrial release, and of the defendant's right to review any conditions imposed on his or her release.

3. That the defendant is not required to make a statement and that if he or she does, it may be used against him or her.

In appropriate cases the court shall appoint counsel for an indigent defendant in accordance with procedures established under rule two (2), subdivision three (3). The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel, in the event the defendant expresses a desire to do so.

Rule 43. BAIL. Admission to bail shall be as provided for in division eleven (XI) of this chapter.

Rule 44. PLEA. The defendant shall be required to enter a plea to the complaint, and permissible pleas include those allowed when the defendant is indicted, as set forth in rule eight (8).

Rule 45. TRIAL DATE. Upon a plea other than guilty the magistrate shall set a trial date which shall be at least fifteen days after the plea is entered. The magistrate shall notify the prosecuting attorney of the trial date and shall advise the defendant that the trial will be without a jury unless demand for jury trial is made at least ten days prior to the date set for trial. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury. If demand is made, the action shall be tried by a jury of six members. Upon the request of the defendant, the magistrate may set the date of trial at a time less than fifteen days after a plea other than guilty is entered. The magistrate shall notify the defendant that a request for earlier trial date shall constitute a waiver of jury.

Rule 46. CHANGE OF VENUE. A change of place of trial may be applied for in the manner prescribed in rule ten (10), and the papers transmitted in similar manner as described therein to the judicial officer or clerk of the court to which change is allowed.

Rule 47. BAILIFF OBTAINED. If trial by jury is demanded, the magistrate shall notify the sheriff who shall furnish a bailiff at that time and place to act as officer of the court.

Rule 48. SELECTION OF JURY; TRIAL.

1. SELECTION OF PANEL. If a trial by jury is demanded, the magistrate shall notify the clerk of the district court of the time and place of trial. The clerk shall thereupon select by lot fourteen names from the district court jury panel. The clerk shall notify these jurors of the time and place for trial.

2. CHALLENGES. Except where inconsistent with this rule, rule seventeen (17) shall apply, but no challenge to the panel is allowed.

3. COMPLETION OF PANEL. If for any reason the panel as chosen by the clerk becomes insufficient to obtain a jury, the magistrate may direct the officer of the court to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors.

4. STRIKES. If, after all challenges and strikes as noted in rule seventeen (17) have been exercised, the remaining jurors number more than six, the parties shall continue to strike jurors in order, commencing with the defendant, until the panel is reduced to six jurors.

5. ALTERNATE JURORS. No alternate jurors shall be chosen.

6. JURY OF SIX. When six jurors appear and are accepted, they shall constitute the jury.

7. OATH OF JURORS. The magistrate must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence."

8. TRIAL. The court shall conduct the trial in the manner of indictable cases in accordance with rule eighteen (18).

9. RECORD. Upon the trial, the judicial magistrate shall make minutes of the testimony of each witness and append the exhibits or copies thereof. The proceedings upon trial shall not be reported, unless a party provides a reporter at such party's expense. By agreement of the parties the magistrate may cause the proceedings upon trial to be reported electronically. If the proceedings are being electronically recorded both parties shall be notified in advance of that recording. If the defendant is indigent and requests that the proceedings upon trial be reported, the judicial magistrate shall cause them to be reported by a reporter, or electronically, at public expense. If the proceedings have been reported electronically the recording shall be retained under the jurisdiction of the magistrate and upon request

shall be transcribed only by a person designated by the court under the supervision of the magistrate. The transcription shall be provided anyone requesting same upon payment of actual cost of transcription or to an indigent defendant as herein above provided.

Rule 49. JUDGMENT. When the defendant is acquitted, he or she must be immediately discharged. When the defendant pleads guilty or is convicted, the magistrate may render judgment thereon as the case may require, being governed by the rules prescribed for the trial of indictable offenses, as far as the same are applicable.

Rule 50. COSTS TAXED TO PROSECUTING WITNESS. If the prosecuting witness fails without good cause to appear or give evidence on the trial, and defendant is discharged on account of such failure, the magistrate may, in his or her discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the magistrate shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor.

Rule 51. SUPPRESSION OF EVIDENCE AND DISPOSITION OF SEIZED PROPERTY. Motions to suppress evidence shall proceed in the manner provided for the trial of indictable offenses, and any property seized dealt with in the manner provided in indictable offenses.

Rule 52. JOINT TRIALS. Unless it shall result in prejudice to a party, the court may order two or more complaints to be tried together if the defendant is the same; or if there is more than one defendant, but all defendants so joined are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

Rule 53. FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE. In a specified simple misdemeanor a court may accept a forfeiture of collateral security in lieu of appearance, as a proper disposition of a case, except for nonscheduled traffic

violations. Each judicial district, by action of a majority of the district judges, may determine the misdemeanors subject to such disposition and promulgate by rule a list of same and disseminate to all magistrates in the district. A copy of such rule shall be transmitted to the clerk of the supreme court. Prior to termination of the case by forfeiture under this rule, the defendant must execute a written request for same. Unless vacated upon application within thirty days of the forfeiture, such forfeiture shall constitute a conviction in satisfaction.

Rule 54. APPEALS.

1. NOTICE OF APPEAL. An appeal may be taken by the plaintiff only upon a finding of invalidity of an ordinance or statute. In all other cases, an appeal may only be taken by the defendant and only upon a judgment of conviction. Execution of the judgment shall be stayed upon the filing with the clerk of the district court an appeal bond with surety approved by the clerk, in the sum specified in the judgment. The defendant may take an appeal, by giving notice orally to the magistrate that he or she appeals, or by delivering to the magistrate not later than ten days thereafter, a written notice of the defendant's appeal, and in either case the magistrate must make an entry on its docket of the giving of such notice. Payment of fine or service of a sentence of imprisonment does not waive the right to appeal, nor render the appeal moot. When an appeal is taken, the magistrate shall forward to the appropriate district court clerk a copy of the docket entries in the magistrate's court, together with copies of the complaint, warrant, motions, pleadings, the magistrate's minutes of the witness' testimony and the exhibits or copies thereof and all other papers in the case. A district judge shall promptly hear the appeal upon the record thus filed without further evidence. Within ten days after an appeal is taken, unless extended by order of a district judge or by stipulation of the parties, any party may file with the clerk, as a part of the record, a transcript of the official report, if any, and, in the event

the report was made electronically, the tape or other medium on which the proceedings were preserved. If the original action was tried before a district judge acting as a judicial magistrate, the appeal shall be to a different district judge. The judge shall decide the appeal without regard to technicalities or defects. Judgment shall be rendered as though the case were being originally tried.

2. BAIL.

a. ADMISSION TO BAIL. Admission to bail shall be as provided for in division eleven (XI) of this chapter. Execution of the judgment shall not be stayed unless the defendant is admitted to bail.

b. OFFICERS AUTHORIZED TO TAKE BAIL. Bail may be taken by the magistrate who rendered the judgment, or by any magistrate in the county of the district court of that county. The magistrate taking bail shall remit it to the clerk of the district court who shall give receipt therefor.

3. COUNSEL. In appropriate cases, the magistrate shall appoint counsel on appeal.

~~4. APPEAL TO SUPREME COURT. After appeal to a district judge in a nonindictable case, either party may appeal from the judgment of the district judge to the supreme court in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as far as applicable. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal as if it had been taken from a judgment prosecuted by indictment.~~

Rule 55. NEW TRIAL. The magistrate, on motion of a defendant, may grant a new trial pursuant to the grounds set forth in rule twenty-three (23), except that a motion for a new trial based on newly discovered evidence must be made within six months after the final judgment. ~~A motion for a new trial based on the ground of newly discovered evidence may be made only before or within thirty days after final judgment.~~ A motion for a new trial based on any other grounds shall be made within seven days after a finding of guilty or within such further time as the court may fix during the seven-day period.

Rule 56. CORRECTION OR REDUCTION OF SENTENCE. The magistrate may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The magistrate may reduce a sentence within ten days after the sentence is imposed or within ten days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within ten days after entry of any order or judgment of the supreme court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law.

APPENDIX OF FORMS

(See Rule 30)

FORM A

COMPLAINT

State of Iowa
County of _____

Before (Judge, Magistrate) _____
(insert name of lower court judge or magistrate)

Criminal Case No. _____

State of Iowa
vs.
A_____ B_____, Defendant

The defendant is accused of the crime of (here name the offense and code or ordinance section ~~provide numerical designation~~), in that the defendant on the _____ day of _____, _____, at the _____ (here locate the city, or township where the offense occurred), in _____ county, did (state the acts or omissions constituting the offense).

/s/_____

FORM B

CONSENT TO FORFEITURE OF COLLATERAL
AS DISPOSITION OF MISDEMEANOR

State of Iowa
County of _____

Criminal Case No. _____

I, the undersigned, agree to have the amount of $_____ forfeited as a fine and my case terminated. I do this with the following understanding:

1. I have been charged with the offense of _____ _____ (here name the offense and provide numerical designation).

2. I understand my rights, including my right to trial before the court on such charge, and voluntarily waive same, understanding that forfeiture of the aforesaid amount terminates my right to a trial and constitutes a conviction of the offense charged.

_____
(Signature of defendant)

FORM C

NOTICE OF APPEAL TO A DISTRICT COURT JUDGE
FROM A JUDGMENT OR ORDER

State of Iowa
County of _____

Criminal Case No. _____

State of Iowa
vs. Notice of Appeal
C _____ D_____, Defendant

Notice is hereby given that C_____ D_____ _____, defendant above named, hereby appeals to a district court judge for _____ County (from the final judgment) (from the order) entered in this action on the _____ day of _____, _____.

/s/ _____
_____
(Address)
Attorney for C_____ D_____

FORM D

BAIL BOND ON APPEAL TO DISTRICT COURT

State of Iowa
County of _____

Criminal Case No. _____

A_____ B_____ having been convicted before C_____ D_____, a magistrate of said county, of the crime of (here designate

it generally as in the information), by a judgment rendered on the _____ day of _____, A.D. _____, and having appealed from said judgment to a district court judge of said county:

We, A_____ B_____, and E_____ F_____, hereby undertake that the said A _____ B_____ will appear in the district court of said county on the _____ day of _____ (month), 19___ (year), (which date shall be not more than twenty days after perfection of the undertaking), and submit to the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be) will pay to the state of Iowa the sum of _____ dollars (the amount of bail fixed).

A_____ B_____
E_____ F_____

Accepted by me, at _____, in the township of _____, this _____ day of _____, A.D. _____.

C_____ D_____
Judicial Magistrate.

Sec. 1303. NEW SECTION. ADDITIONS TO AND AMENDMENT OF RULES. The rules of criminal procedure may be amended, provisions deleted, and new rules added, in the manner prescribed for civil rules under chapter six hundred eighty-four (684) of the Code.

COMMENTS OF THE
ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

RULE 2(4)(a), p. 103: The committee recommends the words "in writing" be added to avoid disputes over whether defendant in fact waived the preliminary hearing.

RULE 2(4)(c), p. 103: The change from rule 11 to rule 10(2) is necessitated by the committee's proposed substitution of rule 11.

RULE 8(1), p. 117: As defined in rule 1(2)(c), p. 101, "'Unnecessary delay' is any unexcused delay longer than twenty-four hours, and consists of a shorter period whenever a magistrate is accessible and available." When used in rule 2(1), p. 102, dealing with the initial appearance of defendant before a magistrate after arrest the words "unnecessary delay" make sense. The committee felt that the words "unnecessary delay" were inappropriate in rule 8(1) which deals with arraignment after indictment. Several members of the committee noted that in their districts a district judge was available for arraignments only one day every one or two weeks, making arraignment within 24 hours impossible. The committee recommends that the word "promptly" be inserted after "conducted" in the first sentence of rule 8(1) and that "without unnecessary delay" be stricken.

RULE 8(2)(a), p. 118: The committee recommends that "insanity" be changed to "incompetency" to distinguish present incompetency to stand trial from insanity as a defense. See rule 10(10)(b)(1), p. 125. The committee further recommends that "for good cause shown" be inserted after "the court may" to make it abundantly clear that the defendant does not have the absolute right to withdraw a plea at any time before judgment.

RULE 10(2)(f), p. 120: The committee could see no reasons why motions for change of venue or change of judge should be treated differently from other pretrial motions. See rule 10(4), p. 121, and rule 10(9), p. 123. The committee therefore recommends the addition of a new paragraph f.

RULE 10(4), p. 121: Because of the proposed addition of rule 10(2)(f), p. 120, the words "or change of venue" should be stricken from rule 10(4). The committee recommends that the time for filing of pretrial motions be extended to 45 days after arraignment. Note that under rule 8(1), p. 117, arraignment is to be conducted promptly after indictment. Under rule 27(2)(b), p. 159, a defendant is to be brought to trial within 90 days after indictment.

RULE 10(5), p. 121: The committee recommends that "ten" be enlarged to "20" days after arraignment for filing a motion for a bill of particulars.

RULE 10(8), p. 123: The committee felt that pretrial motions should be ruled upon as soon as possible to allow the parties ample time to prepare for trial and to utilize information gained by discovery. If timely pretrial motions were not determined until just before trial, their usefulness would be minimal. The committee considered placing a time limit for the court's rulings on pretrial motions. However drafting an acceptable rule providing for a specific time limit was not easy. The committee then reached a consensus that a general statement of policy would be better. Thus the committee recommends that "promptly" be substituted for "before trial."

RULE 10(9), p. 123: The committee was of the opinion that two distinct motions, one for change of venue and the other for change of judge, should be identified. The committee recommends that the words "OR CHANGE OF JUDGE" be added to the title of the rule.

RULE 10(9)(a), p. 123: Since the committee recommends a motion for change of venue or change of judge be treated like other pretrial motions (see proposed rule 10(1)(f), p. 120, and comments), paragraph "a" is unnecessary and should be deleted.

RULE 10(9)(b), p. 123: This paragraph should be relettered "a". The committee felt that "original" was too restrictive. There could be prejudice in the original county, a change of venue to county two could be granted, there could also be prejudice in county two, and then one of the parties might wish to move for a second change of venue based on the prejudice in county two, not the original county. The committee therefore recommends that "original" be stricken and "in which trial is to be held" be added after "county."

The committee was of the opinion that the state, as well as the defendant, was entitled to a fair and impartial trial. The committee recommends that "a party" be substituted for "the defendant."

The committee recommends that "motion" and "movant" be substituted for "petition" and "petitioners" for consistency.

The committee felt that the prejudice of only the judge should not result in a change to a new county. The committee recommends a new sentence so stating be added.

RULE 10(9)(c), p. 123: The committee thought this paragraph was too restrictive and was unnecessary. The committee felt that either party should be able to move for as many successive changes as necessary in the interest of justice. The committee recommends the paragraph on second changes be stricken.

RULE 10(9)(d), pp. 123-24: This paragraph should be relettered "b".

RULE 10(10)(b), pp. 125: The title should be changed to reflect that the rule deals with diminished responsibility as well as insanity.

RULE 10(10)(b)(1), pp. 125: The committee felt that diminished responsibility could be handled with insanity without a separate subparagraph. Thus the committee recommends that "or diminished responsibility" be added after "insanity."

The second sentence of rule 10(10)(b)(1) provides that the court may allow the late filing of the notice. Rule 10(4), p. 121, provides generally that the court for good cause shown may extend the time for filing pretrial motions. The committee recommends that the redundant words, "or at such later time as the court may direct" be stricken from the first sentence of rule 10(10)(b)(1).

The committee felt the defendant should give the prosecuting attorney a copy of the notice defendant filed. Orally informing the prosecuting attorney would not be adequate. Therefore the committee recommends that "give notice to" be substituted for "inform."

RULE 10(10)(b)(2), p. 125: Since the committee proposes that diminished responsibility be included in rule 10(10)(b)(1), p. 125, it recommends that rule 10(10)(b)(2) be stricken.

RULE 10(10)(b)(3), pp. 125: This rule should be renumbered "10(10)(b)(2)."

The committee recommends that "given notice of" be substituted for "indicated" and that "or diminished responsibility" be added after insanity to be consistent with proposed rule 10(10)(b)(1).

The committee felt that defendant should have to reveal to the State only expert witnesses he intends to call at trial, not all experts engaged by him to examine him on the issue of insanity. The committee felt that generally the State would want to have defendant examined by its expert after receiving notice from the defendant that he was going to call an expert. However, there is the possibility the State might desire to have defendant examined by its experts, even when defendant does not intend to call an expert on the issue. The committee felt the court should have the discretion to order or refuse to order examination of the defendant. The court should not sua sponte order examination, rather it should act only upon the application of the State. The committee further felt that the names of the State's experts should be disclosed to defendant prior to the examination so he would have the opportunity to object to the specific individuals.

The committee therefore recommends that,

> "Where a defendant has indicated the use of the defense of insanity, and has engaged an expert or experts for the purpose of examining him on the issue of insanity, the court shall order the examination of the defendant by a state-named expert or experts"

be changed to read as follows:

> "Where a defendant has given notice of the use of the defense of insanity or diminished responsibility, and intends to call an expert witness or witnesses on that issue at trial the defendant shall within the time

provided for the filing of pretrial motions notify the attorney for the government of the name of each such witness. Upon such notice, or as otherwise appropriate, the court may, upon application, order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination."

RULE 11, pp. 126-126(c): This rule as set out in the statute deals only with evidence obtained by illegal search or seizure. It appears to be an attempt to codify the holdings of cases interpretting Amendment 4, United States Constitution. It makes no mention of confessions or evidence obtained in violation of defendant's Amendment 5 rights. It makes no mention of evidence obtained in violation of an Iowa statute, e.g., a blood test taken in a manner contrary to § 321B.3, The Code. On the other hand rule 10(2)(c), p. 120, mentions generally, "Motions to suppress evidence on the ground that it was illegally obtained," as permissible pretrial motions. The committee felt there was a danger that by specifying grounds for a motion to suppress other valid grounds would be excluded. To meaningfully codify all possible grounds for a motion to suppress would be an impossible task. The committee therefore recommends that rule 11 as it appears in Senate File 85 be deleted and a rule on a different topic be substituted.

(New) RULE 11, pp. 126(a)- 26(c). The committee recommends that a new rule on pretrial judgments of acquittal be added. The committee felt that if pretrial discovery was to be really meaningful a mode of disposing of a case prior to a full-blown trial, similar to a motion for summary judgment in civil cases, should be provided. Proposed rule 11 is modeled after rule 481 of the Uniform Rules of Criminal Procedure drafted by the National Conference of Commissioners on Uniform State Laws. The rule and some observations about it may be found in Epstein and Austern, Unif. R. Crim. P.: ABA Crim. Just. Sect. Comparison, at 130-33. Epstein and Austern on page 132 note that the rule provides the defendant with a judicial determination as to whether the prosecutor's case is strong enough to proceed to trial. A preliminary hearing serves about the same function. When a preliminary hearing is bypassed by use of a trial (county attorney's) information, the availability of a pretrial motion of acquittal is especially important. The committee is of the opinion the rule is drafted in a fashion which discourages its abuse.

RULE 12(1), pp. 126(c)-27. The committee felt it would often be inefficient and expensive for a defendant to be able to take depositions prior to indictment or trial information without limitation. Therefore the committee recommends that "after preliminary information indictment, or information," be deleted and that the following sentence be added: "Depositions before indictment or trial information may only be had with leave of court."

The committee recommends that "and with the same limitations" be added before "as in civil actions" to make it clear that criminal discovery is not broader than civil discovery.

RULE 12(2), p. 127: The last sentence in effect states that special circumstances are special circumstances. Since this is not very helpful, the committee recommends that the second

paragraph of rule 12(2) be stricken.

RULE 12(3), p. 127: The committee recommends that the caption be changed from "BY STATE" to "LISTING OF DEFENDANT'S WITNESSES" to alert the reader of the rules that the defendant may have to provide the state with a list of his witnesses.

The last sentence of this rule states that witnesses listed by the defendant are subject to being deposed by the state. The committee was of the opinion that the defendant should never be subject to be deposed by the state and therefore the defendant should not be required to list himself as a witness. The committee recommends that the words, ", except the defendant," be inserted in the first sentence.

RULE 13(3)(b), p. 129: The committee recommends that "subparagraph one (1)" be changed to "subparagraph two (2)" to correct a drafting or typographical error.

RULE 13(3)(c), pp. 129-30: This rule apparently relates to motions by the state for disclosure of defendant's evidence. The committee recommends that "subdivision (2)" be changed to "subdivision (3)" to correct the drafting or typographical error.

The committee recommends that the state have ten days instead of only five to request disclosure of defendant's evidence. The court should have the power to extend that time under appropriate circumstances.

RULE 13(3)(d), pp. 130: The committee felt that restriction of comment on unemployed evidence was a matter best left to the individual circumstances and the law of evidence, rather than the outright prohibition by rule. Thus the committee recommends that paragraph "d" be deleted.

RULE 13(5)(a), pp. 130-31: The committee felt that the trial court should not be able to enter protective orders based on a secret statement made by the movant. The committee felt the movant should be required to disclose the nature of the materials which he wished to protect and the adverse party should have the opportunity to resist. The transmission of a secret statement to the appellate court is of little benefit to a party who wishes to appeal trial court's protective order. It would be difficult for the party to argue trial court erred in granting the protective order based on a statement the party has never seen. The committee recommends that the last paragraph of rule 13(5)(a) be stricken.

RULE 13(5)(c), p. 131: The committee was of the opinion that it should be made clear that the court could enter an order compelling discovery or providing other relief for failure to comply with a discovery rule or order only when the person desiring discovery made timely application for entry of such an order. The committee recommends that the words "upon timely application" be added after "the court may".

RULE 15(3), p. 133: The committee felt that a stipulation by defendant's attorney should be binding on defendant. It was believed that requiring defendant's signature on all stipulations would be inefficient, troublesome, and time-consuming. The last sentence should be stricken.

RULE 18(1)(a)(3), p. 138: Due to the availability of pretrial discovery defendant should know, prior to trial, the nature of the state's case and evidence. The committee felt that defendant should be ready to making his opening statement prior to the state's evidence. The committee recommends that the last clause be deleted.

RULE 18(2), p. 138-39: The committee recommends that the words "in support of the indictment or trial information" be added after "Additional witnesses" to make it clear the state could present witnesses in rebuttal without giving the defendant a minute of the rebuttal testimony prior to trial.

The committee felt that the time for giving additional minutes of testimony should be ten days, instead of seven days, before trial.

RULE 18(3), p. 140: The committee recommends that "seven" be changed to "ten" as recommended in the comment to rule 18(2).

Rule 18(2) deals with witnesses and testimony. The committee recommends that for consistency "call witnesses" be substituted for "introduce evidence," and in three places "testimony" be substituted for "evidence."

RULE 18(5)(a)(1) p. 140: The committee recommends that, "Upon motion made," be added to make it clear that a jury view would be granted only upon a party's motion, not upon the court's own motion.

RULE 18(9), p. 144: The committee recommends that "these rules" be substituted for "rule ten (10)" because the original terminology is unnecessarily restrictive.

RULE 19(3)(a) p. 145: The committee felt that the court should be able to inquire into the validity of a witness' assertion of his right to remain silent before determining whether the witness should be granted immunity and compelled to answer. In other words a frivolous assertion of Amendment 5 rights should not be sufficient to trigger the operation of the rule. The committee therefore recommends the addition of "properly" before "asserted".

RULE 19(3)(b), p. 146. The committee recommends the words "except for perjury or contempt" be added at the end to make this rule consistent with rule 19(3)(a)(4), p. 146.

RULE 20(1), p. 146: The committee recommends that "these rules" be substituted for "this rule" because the original language is too restrictive.

RULE 20(5), p. 147. The requirement that an inconsistent statement must be under oath to be admissible is more restrictive than present law. The committee felt restricting the present law was not advisable. The committee recommends the rule on inconsistent statements be deleted.

RULE 20(6), p. 147. This should be renumbered "5". With the utilization of pretrial discovery the defendant should know prior to trial whether he intends to introduce evidence of the prosecuting witness' previous sexual conduct. To be fair to the state and to avoid surprise on the eve of or during trial, defendant should be required to give some advance notice. The committee recommends that "not later than five days before" be substituted for "before or during trial."

RULE 21(8), p. 149. The term "mental illness" is not used elsewhere in the rules. The defense of "insanity or diminished responsibility" is specifically recognized in rule 10(10)(b), p. 125. The committee recommends that for consistency "insanity or diminished responsibility" be substituted for "mental illness."

RULE 22(3)(e), p. 151: Under Senate File 1092 creating the Iowa Court of Appeals the supreme court is to promulgate Rules of Appellate Procedure effective July 1, 1977. This may result in the revocation of the Supreme Court Rules relating to criminal appeals. When the Rules of Criminal Procedure become effective, there may be no Supreme Court Rule 15.1. The committee therefore recommends that "as provided in rule fifteen point one (15.1) of the rules of the supreme court" be deleted, and "statutory" be inserted before "right to appeal".

RULE 23(2)(b)(8), p. 152: The committee felt the defendant should be encouraged to file a motion for new trial on grounds of newly discovered evidence as soon as possible and discouraged from waiting the full two years. The committee recommends that the word "shall" be substituted for "may" and the words "promptly and" be added after "be made."

FORMS 1 - 9, pp. 160-67: The committee recommends that each form contain a blank for insertion of the criminal case number. The purposes of the number include (1) providing more precise identification than available with names only, and (2) making filing and record keeping easier. Even if a criminal case number were not initially available (e.g., when executing a search warrant) the blank should be provided so the appropriate number could be added if and when it later became available and useful.

FORM 2, p. 161: The committee recommends that the words "without unnecessary delay" be added at the end of the substantive portion of the form to emphasize to the arresting officer the necessity of prompt action. The use of this term is consistent with rules 1(2)(c) and 2(1), pp. 101-02.

RULE 54(4), p. 177: This rule providing for appeal to the supreme court in nonindictable cases is inconsistent with § 1406, p. 182, of Senate File 85, which provides that discretionary review of simple misdemeanor and ordinance violation convictions may be available to defendant. The committee recommends rule 54(4) be stricken.

RULE 55, p. 177: The first sentence of the rule provides that a motion for new trial based on newly discovered evidence must be made within six months after final judgment. The second sentence provides that the same motion on the same grounds must be made within 30 days after the judgment. The committee recommends that this inconsistency be eliminated by striking the second sentence.

FORMS A - D, pp. 178-80: The committee recommends that a blank be provided on each form for the entry of a criminal case number for identification and record-keeping purposes.

FORM A, p. 178: The committee recommends that the words "code or ordinance section" be substituted for "provide numerical designation" because the new words more accurately reflect the legislature's intent.

GENERAL COMMENTS: The committee had difficulty finding the rules and appropriate subdivisions of the rules. Some of the confusion is caused by indicating the first major subdivisions of numbered rules by arabic numerals instead of letters. The committee recommends that the Code Editor be directed to renumber the rules in a manner consistent with the Rules of Civil Procedure. See, e.g., rule 134, R.C.P., a portion of which is reproduced below:

134. Failure to make discovery — consequences.

(a) *Motion for order compelling discovery.* A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under rule 140 or 150, or a corporation or other entity fails to make a designation under rule 147 "*e*", or a party fails to answer an interrogatory submitted under rule 126, or if a party, in response to a request for inspection submitted under rule 129, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

In ruling on such motion, the court may make such protective order as it would have been empowered to make on a motion pursuant to rule 123.

(3) *Evasive or incomplete answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of expenses of motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.*

(1) *Sanctions by court in district where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under rule 147 "*e*" to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision "*a*" of this rule or rule 132, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party ;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

FINAL DRAFT
REPORT OF THE
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE
December 23, 1976

Deletions proposed by the committee are lined out - - -.
Additions proposed by the committee appear in *italics*.

DIVISION XIII

IOWA RULES OF CRIMINAL PROCEDURE

Section 1301. NEW SECTION. PROVISIONS RELATING TO HEARING AND TRIAL IN INDICTABLE CASES.

Rule 1. SCOPE OF RULES AND DEFINITIONS.

1. SCOPE. ~~The rules in this section provide procedures~~ for indictable criminal cases.

2. DEFINITIONS.

a. "Committing magistrate" means judicial magistrates, district associate judges, and district judges.

b. "Judicial officer" means justices of the supreme court and committing magistrates.

c. "Unnecessary delay" is any unexcused delay longer than twenty-four hours, and consists of a shorter period whenever a magistrate is accessible and available.

Rule 2. PROCEEDINGS BEFORE THE MAGISTRATE.

1. INITIAL APPEARANCE OF DEFENDANT. An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate as provided by law. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith. If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make an initial, preliminary determination from the complaint, or from an affidavit or affidavits filed with the complaint or from an oral statement under oath or affirmation from the arresting officer or other person, whether there is probable cause to believe that an offense has been committed and that the defendant has committed it. The magistrate's decision in this regard shall be entered in the magistrate's record of the case.

2. STATEMENT BY THE MAGISTRATE. The magistrate shall inform a defendant who appears before the magistrate after arrest, complaint, summons, or citation of the complaint against the defendant, of the defendant's right to retain counsel, of the defendant's right to request the assignment of counsel if the defendant is unable to obtain counsel, of the general circumstances under which the defendant may secure pretrial release, of the defendant's right to review of any conditions imposed on the defendant's release and shall provide the defendant with a copy of the complaint. The magistrate shall also inform the defendant that he or she is not required ~~to make a statement and that any statement made by the~~ defendant may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult counsel.

3. COUNSEL. From a list approved by the district court judge, the magistrate shall have authority to appoint counsel to represent the defendant in the event the defendant requests representation by counsel and is entitled to same. Counsel will be assigned to assist the defendant only upon a showing as required in section three hundred thirty-six A point four (336A.4) of the Code. Counsel so appointed may make

application in the district court for compensation for such services.

4. PRELIMINARY HEARING. The defendant shall not be called upon to plead and the magistrate shall proceed as follows:

a. PRELIMINARY HEARING. The magistrate shall inform the defendant that he or she is entitled to a preliminary hearing unless the defendant is indicted by a grand jury or a true information is filed against the defendant or unless he or she waives the preliminary hearing *in writing*. If the defendant waives preliminary hearing, the magistrate shall order the defendant held to answer in further proceedings. If the defendant does not waive the preliminary hearing, the magistrate shall schedule a preliminary hearing and inform the defendant of the date of the preliminary hearing. Such hearing shall be held within a reasonable time but in any event not later than ten days following the initial appearance if the defendant is in custody and no later than twenty days if he or she is not in custody. Upon showing of good cause, the time limits specified in this paragraph may be extended by the magistrate.

b. PROBABLE CAUSE FINDING. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall order the defendant held to answer in further proceedings. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.

c. CONSTITUTIONAL OBJECTIONS. Rules excluding evidence ~~on the ground that it was~~ acquired by unlawful means are not applicable. Motions to suppress must be made to the trial court as provided in rule ~~eleven (11).~~ *10(2)*.

d. PRIVATE HEARING. The magistrate must also, upon request of the defendant, exclude from the hearing all persons except the magistrate, the magistrate's clerk, the peace officer

who has custody of the defendant, a court reporter, the attorney or attorneys representing the state, a peace officer selected by the attorney representing the state, the defendant and the defendant's counsel.

e. DISCHARGE OF DEFENDANT. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

f. TRANSMISSION OF MAGISTRATE'S RECORD ENTRIES. After concluding the proceedings the magistrate shall transmit forthwith to the clerk of the district court all papers and recordings in the proceeding.

g. PRELIMINARY HEARING TESTIMONY PRESERVED BY STENOGRAPHER OR TAPE RECORDER: PRODUCTION PRIOR TO TRIAL. Proceedings at the preliminary hearing shall be taken down by a court reporter or recording equipment and shall be made available on the following basis:

(1) On timely application to a magistrate, for good cause shown, and subject to the availability of facilities, the attorney for a defendant in a criminal case may be given the opportunity to have the recorded tape of the hearing on preliminary examination replayed for his or her information in connection with any further hearing or in connection with his or her preparation for trial.

(2) On application of a defendant addressed to a district judge, showing that the record of preliminary hearing, in whole or in part, should be made available to the defendant's counsel, an order may issue that the clerk make available a copy of the record, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such record by the defendant unless the defendant makes a sufficient affidavit that he or she is unable to pay or to give security therefor, in which case the expense shall be paid by the county. The prosecution may move also that

a copy of the record, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(3) The copy of the record of such proceedings furnished pursuant to subparagraph two (2) of this paragraph may consist of a tape of the recorded proceedings or a stenographic transcript of the proceedings.

If the record is ordered, the court shall specify in its order to the magistrate an appropriate method of making the record available. If, in any circumstance, a typewritten transcript is furnished counsel, a copy thereof shall be filed with the clerk of court.

Rule 3. THE GRAND JURY.

1. DRAWING GRAND JURORS. At such times as prescribed by the chief judge of the district court in the public interest, the names of the twelve persons constituting the panel of the grand jury shall be placed by the clerk in a container, and after thoroughly mixing the same, in open court the clerk shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury. Should any of the persons so drawn be excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw additional names until the seven grand jurors are secured.

If the panel is insufficient to provide and maintain a grand jury of seven members, the panel shall be refilled from the jury box by the clerk of the court under direction of the court; additional grand jurors shall be selected until a grand jury of seven grand jurors is secured, and they shall be summoned in the manner as those originally drawn.

2. CHALLENGE TO GRAND JURY.

a. CHALLENGE TO ARRAY. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel or the grand jury, only for the reason that it was not composed or drawn as prescribed by law. If the challenge be sustained, the court shall thereupon proceed to take

remedial action to compose a proper grand jury panel or grand jury.

b. CHALLENGE TO INDIVIDUAL JURORS. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

(1) By the state or the defendant, because the grand juror does not possess the qualifications required by law.

(2) By the state only because:

(a) The juror is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

(b) The juror is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

(c) The juror is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

(d) The juror is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

(3) By the defendant only because:

(a) The juror is a prosecutor upon a charge against the defendant.

(b) The juror has formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true verdict upon the evidence submitted.

c. DECISION BY COURT. Challenges to the panel or to an individual grand juror shall be decided by the court.

d. MOTION TO DISMISS. A motion to dismiss the indictment may be based on challenges to the array or to an individual juror, if the grounds for challenge which are alleged in the motion of the defendant have not previously been determined pursuant to a challenge asserted by the defendant pursuant to paragraph a or paragraph b of this subsection.

3. DISCHARGING AND SUMMONING JURORS.

a. DISCHARGE. A grand jury, on the completion of its business, shall be discharged by the court. The grand jury shall serve until discharged by the court, and the regular term of service by a grand juror should not exceed one calendar year. However, when an investigation which has been undertaken by the grand jury is incomplete, the court may by order extend the eligibility of a grand juror beyond one year, to the completion of the investigation.

b. SUMMONING JURORS. Upon order of the court the clerk shall issue his precept or precepts to the sheriff, commanding the sheriff to summon the grand juror or jurors. Upon a failure of a grand juror to obey such summons without sufficient cause, he may be punished for contempt.

c. EXCUSING JURORS. If the court excuses a juror, the court may impanel another person in place of the juror excused. If the grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, and if they are exhausted the additional number required shall be drawn from the grand jury list. If a challenge to the array is allowed, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the array has been allowed, and they shall be summoned in the manner prescribed in this rule.

4. OATHS AND PROCEDURE.

a. FOREMAN. From the persons impaneled as grand jurors the court shall appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged, an acting foreman may be appointed.

The foreman of the grand jury may administer the oath to all witnesses produced and examined before it.

b. CLERKS AND BAILIFFS. The court may appoint as clerk of the grand jury a competent person who is not a member

thereof. In addition thereto the court may, if it deems it necessary, appoint assistant clerks of the grand jury. If no such appointments are made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. In like manner the court may appoint bailiffs for the grand jury to serve with the powers of a peace officer while so acting.

c. OATHS ADMINISTERED TO GRAND JURY, CLERK, AND BAILIFF. The following oath shall be administered to the grand jury: "Do each of you, as the grand jury, solemnly swear or affirm that you will diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments that you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding?"

Any clerk, assistant clerk, or bailiff appointed by the court must be given the following oath: "Do you solemnly swear that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof?"

d. SECRECY OF PROCEEDINGS. Every member of the grand jury, and its clerks and bailiffs, shall keep secret the proceedings of that body and the testimony given before it, except as provided in rule thirteen (13). No such person shall disclose the fact that an indictment has been found except when necessary for the issuance and execution of a warrant or summons, and such duty of nondisclosure shall continue until the indicted person has been arrested. The county attorney shall be allowed to appear before the grand

jury on his or her own request for the purpose of giving information or for the purpose of examining witnesses, and the grand jury may at all reasonable times ask the advice of the county attorney or the court. However, neither the county attorney nor any other officer or person except the grand jury may be present when the grand jury is voting upon the finding of an indictment.

e. SECURING WITNESSES AND RECORDS. The clerk of the court must, when required by the foreman of the grand jury or county attorney, issue subpoenas for witnesses to appear before the grand jury. The grand jury is entitled to free access at all reasonable times to county institutions and places of confinement, and to the examination without charge of all public records within the county.

f. MINUTES. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment.

g. EVIDENCE FOR DEFENDANT. The grand jury is not bound to hear evidence for the defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced.

h. REFUSAL OF WITNESS TO TESTIFY. When a witness under examination before the grand jury refuses to testify or to answer a question put to him or her, it shall proceed with the witness before a district court judge, and the foreman shall then distinctly state before a district court judge the question and the refusal of the witness, and if upon hearing the witness the court shall decide that the witness is bound to testify or answer the question propounded, the judge shall inquire of the witness if he or she persists in his or her refusal, and, if he does, shall proceed with the witness as in cases of similar refusal in open court.

i. EFFECT OF REFUSAL TO INDICT. If, upon investigation, the grand jury refuses to find an indictment against one charged with a public offense, it shall return all papers

to the clerk, with an endorsement thereon, signed by the foreman, to the effect that the charge is ignored. Thereupon the district court judge must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given. Upon good cause shown, the district court judge may direct that the charge again be submitted to the grand jury. Such ignoring of the charge does not prevent the cause from being submitted to another grand jury as the court may direct; but without such direction it cannot be again submitted.

j. DUTY OF GRAND JURY. The grand jury shall inquire into all indictable offenses which may be tried within the county, and present them to the court by indictment. The grand jury shall meet at times specified by order of a district judge. In addition to those times, the grand jury shall meet at the request of the county attorney or upon the request of a majority of the grand jurors.

It is made the special duty of the grand jury to inquire into:

(1) The case of every person imprisoned in the detention facilities of the county on a criminal charge and not indicted.

(2) The condition and management of the public prisons, county institutions and places of detention within the county.

(3) The unlawful misconduct in office in the county of public officers and employees.

Rule 4. INDICTMENT.

1. DEFINED. An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that the person named therein has committed an indictable public offense, punishable on indictment.

2. USE OF INDICTMENT. Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment either on indictment or on information as provided in rule five (5).

3. EVIDENCE TO SUPPORT. An indictment should be found

when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it should not. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the stenographic or taped record of evidence given by witnesses before a committing magistrate. If an indictment is found in whole or in part upon testimony taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment.

4. VOTE NECESSARY. An indictment cannot be found without the concurrence of five grand jurors. Every indictment must be endorsed "a true bill" and the endorsement signed by the foreman of the grand jury.

5. PRESENTATION AND FILING. An indictment, when found by the grand jury and properly endorsed, shall be presented to the court with the minutes of evidence of the witnesses relied on. The presentation shall be made by the foreman of the grand jury in the presence of the members of the grand jury. The indictment, minutes of evidence, and all exhibits relating thereto shall be transmitted to the clerk of the court and filed by the clerk.

6. MINUTES.

a. A minute of evidence shall consist of a notice in writing stating the name, place of residence, and occupation of the witness upon whose testimony the indictment is found, and a full and fair statement of the witness' testimony before the grand jury.

b. COPY TO DEFENSE. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the county attorney, or the defendant and his or her counsel. The clerk of the court must, on demand made, furnish the defendant or his or her counsel a copy thereof without charge.

c. MINUTES USED AGAIN. A grand jury may consider minutes

of testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

7. CONTENTS OF INDICTMENT. An indictment is a plain, concise, and definite statement of the offense charged. The indictment shall be signed by the foreman of the grand jury. The names of all witnesses on whose evidence the indictment is found must be endorsed thereon. The indictment may be in the general indictment form set forth in the illustrative table of forms appended to the Iowa rules of criminal procedure. The indictment shall include the following:

a. The name of the accused, if known, and if not known, designation of the accused by any name by which the accused may be identified.

b. The name and if provided by law the degree of the offense, identifying by number the statutory provision or provisions alleged to have been violated.

c. The time and place of the offense as definitely as can be done.

d. Where the means by which the offense is committed are necessary to charge an offense, a brief statement of the acts or omissions by which the offense is alleged to have been committed.

No indictment is invalid or insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in a matter of form which does not prejudice a substantial right of the defendant.

8. AMENDMENT.

a. GENERALLY. The court may, on motion of the state, and before or during the trial, order the indictment amended so as to correct errors or omissions in matters of form or substance. Amendment may be allowed before or during trial when no substantial rights of the defendant are prejudiced by the amendment, and if a wholly new and different offense is not charged.

b. AMENDMENT BEFORE TRIAL. If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be

served upon the defendant, or upon the defendant's attorney of record, and an opportunity given the defendant to resist the same.

c. AMENDMENT DURING TRIAL. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant and the defendant's counsel, and such record shall constitute sufficient notice to the defendant.

d. CONTINUANCE. No continuance or delay in trial shall be granted because of such amendment unless it appears that defendant should have additional time to prepare because of such amendment.

e. AMENDMENT OF MINUTES. Minutes may be amended in the same manner and to the same extent that an indictment may be amended.

Rule 5. INFORMATION.

1. PROSECUTION ON INFORMATION. All indictable offenses may be prosecuted by a trial information. The prosecuting attorney may at any time, whether or not the grand jury is in session, file an information with a district court judge or district associate judge charging a person with an indictable offense.

2. ENDORSEMENT. An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney or in his or her name by an assistant prosecuting attorney.

3. WITNESS NAMES AND MINUTES. The prosecuting attorney shall, at the time of filing such information, endorse or cause to be endorsed thereon the names, occupations, and last known addresses of the witnesses whose evidence the prosecuting attorney expects to introduce and use on the trial of the same, and shall also file with such information, of each witness whose name is endorsed upon the information, a statement sufficient to enable the defendant to prepare his defense.

4. APPROVAL BY JUDGE. Prior to the filing of the information, a district judge or district associate judge having jurisdiction of the offense must approve the information

by a finding that the evidence contained in the information and the minutes of testimony, if unexplained, would warrant a conviction by the trial jury. If not approved, the charge may be presented to the grand jury for consideration. At any time after judicial approval of an information, and prior to the commencement of trail, the court, on its own motion, may order said information set aside and said case submitted to the grand jury.

5. INDICTMENT RULES APPLICABLE. The information shall be drawn and construed, in matters of substance, as indictments are required to be drawn and construed. The term "indictment" embraces the trial information, and all provisions of law applying to prosecutions on indictments apply also to informations, except where otherwise provided for in these rules, or when the context requires otherwise.

6. INVESTIGATION BY PROSECUTING ATTORNEY. The clerk of the district court, on written application of the prosecuting attorney and the approval of the court, shall issue subpoenas including subpoenas duces tecum for such witnesses as the prosecuting attorney may require in investigating an offense, and in such subpoenas shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. Such application and judicial order of approval shall be maintained by the clerk in a confidential file until a charge is filed, in which event disclosure shall be made, unless the court in an in camera hearing orders that it be kept confidential. The prosecuting attorney shall have the authority to administer oaths to said witnesses and shall have the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. The rights and responsibilities of such witnesses and any penalties for violations thereof shall otherwise be the same as a witness subpoenaed to the grand jury.

Rule 6. PLEADING SPECIAL MATTERS IN INDICTMENTS AND INFORMATIONS--MULTIPLE OFFENSES OR DEFENDANTS; PLEADING PRIOR CONVICTIONS; PLEADING STATUTES.

1. MULTIPLE OFFENSES. When the conduct of a defendant

may establish the commission of more than one public offense arising out of the same transaction or occurrence, the defendant may be prosecuted for each of such offenses. Each of such offenses may be alleged and prosecuted as separate counts in a single complaint, information or indictment. Where the public offense which is alleged carries with it certain lesser included offenses, the latter should not be charged, and it is sufficient to charge that the accused committed the public offense.

2. PROSECUTION AND JUDGMENT. Upon prosecution for a crime, the defendant may be convicted of either the crime charged or an included crime, but not both.

3. DUTY OF COURT TO INSTRUCT. In cases where the crime charged may include some lesser crime it is the duty of the trial court to instruct the jury, not only as to the crime charged but as to all lesser crimes of which the accused might be found guilty under the indictment and upon the evidence adduced, even though such instructions have not been requested or have been objected to.

4. CHARGING MULTIPLE DEFENDANTS.

a. MULTIPLE DEFENDANTS. Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same act or the same transaction or occurrence out of which the offense or offenses arose. Such defendants may be charged in one or more counts together or separately, and all the defendants need not be charged in each count.

b. PROSECUTION AND JUDGMENT. When an indictment charges a defendant with a felony, and the same indictment charges ~~two or more defendants, those defendants~~ jointly charged may be tried jointly, if in the discretion of the court a joint trial will not result in prejudice to one or more of the parties; otherwise the defendants shall be tried separately. Where jointly tried, each defendant shall be judged separately on each count.

5. ALLEGATIONS OF PRIOR CONVICTIONS. If the offense charged is one for which the defendant, if convicted, will

be subject by reason of the Code, to an increased penalty because of prior convictions, the allegation of such convictions, if any, shall be contained in the indictment. A supplemental indictment shall be prepared for the purpose of trial of the facts of the current offense only, and shall satisfy all pertinent requirements of the Code, except that it shall make no mention, directly or indirectly, of the allegation of the prior convictions, and shall be the only indictment read or otherwise presented to the jury prior to conviction of the current offense. The effect of this subdivision shall be to alter the procedure for trying, in one criminal proceeding, the offenses appropriate to its provisions, and not to alter in any manner the basic elements of an offense as provided by law.

6. PLEADING STATUTES. A pleading asserting any statute of another state, territory or jurisdiction of the United States, or a right derived therefrom, shall refer to such statute by plain designation and if such reference is made, the court shall judicially notice such statute.

Rule 7. PROCEEDINGS AFTER INDICTMENT OR INFORMATION.

1. ISSUANCE. Upon the request of the prosecuting attorney the court shall issue a warrant for each defendant named in the indictment or information. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court. The warrant or summons shall be delivered to a person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

2. FORM.

a. WARRANT. The warrant shall be signed by the judge or clerk; it shall describe the offense charged in the indictment; and it shall command that the defendant shall be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant. The warrant may be substantially in the form described in the table of forms to the Iowa rules of criminal procedure. The warrant may be served in any county in the state.

b. SUMMONS. The summons shall be in the form described in section four hundred two (402) of this chapter, except that it shall be signed by the clerk.

3. EXECUTION, SERVICE, AND RETURN.

a. EXECUTION OR SERVICE. The warrant shall be executed or the summons served as provided in division four (IV) of this chapter. A summons to a corporation shall be in the form prescribed in section seven hundred five (705) of this chapter. Upon the return of an indictment or upon the filing of trial information against a person confined in any penal institution, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial.

b. RETURN. The officer executing a warrant, or the person to whom a summons was delivered for service shall make return thereof to the court.

Rule 8. ARRAIGNMENT AND PLEA.

1. CONDUCT OF ARRAIGNMENT. Arraignment shall be conducted in open court ~~without unnecessary delay~~ promptly. If the defendant appears for arraignment without counsel, the defendant must, before proceeding therewith, be informed by the court of his or her right thereto, and be asked if he or she desires counsel; and if he or she does, and is unable to employ any, the court must assign the defendant counsel, who shall have free access to the defendant at all reasonable hours. Where the defendant makes an informed waiver of counsel, the court in its discretion may assign standby counsel to assist the accused. Arraignment shall consist of reading the indictment to the defendant or stating to the defendant the substance of the charge and calling on on the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before he or she is called upon to plead.

The defendant must be informed that if the name by which he or she is indicted or informed against is not his or her true name, he or she must then declare what his or her true name is, or be proceeded against by the name in the indictment, and asking the defendant what he or she answers to the indictment. If the defendant gives no other name or gives his or her true name, the defendant is thereafter precluded from objecting to the indictment or information upon the ground of being therein improperly named. If the defendant alleges that another name is his or her true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment shall be had against the defendant by that name, and the indictment amended accordingly.

2. PLEAS TO THE INDICTMENT OR INFORMATION.

a. IN GENERAL. A defendant may plead guilty, not guilty, not guilty by reason of insanity, not triable by reason of present ~~insanity~~ incompetency, or a former judgment of conviction or acquittal of the offense charged. If the defendant fails or refuses to plead at arraignment, or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. At any time before judgment, the court may, for good cause shown, permit a plea to be withdrawn and other plea or pleas substituted. A defendant who does not plead guilty may enter one or more of the other pleas.

b. PLEAS OF GUILTY. The court may refuse to accept a plea of guilty, and shall not accept such plea without first addressing the defendant personally and determining that the plea is made voluntarily. The defendant shall be informed of the following:

(1) The nature of the charge to which the plea is offered.

(2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.

(3) That the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty.

(4) That if the defendant pleads guilty there will not be a further trial of any kind, so that by pleading guilty

he waives the right to a trial by jury or otherwise and the right to be confronted with the witnesses against him or her.

The court shall accept the guilty plea only after determining that the defendant understands these matters, that the plea is voluntary, and that there is a factual basis for same.

3. RECORD OF PROCEEDINGS. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement.

Rule 9. PLEA BARGAINING.

1. IN GENERAL. The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both.

2. ADVISING COURT OF AGREEMENT. If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

3. ACCEPTANCE OF PLEA. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement or another disposition more favorable to the defendant than that provided for in the plea agreement.

4. REJECTION OF PLEA. If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court

is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his or her plea, and advise the defendant that if he or she persists in his or her guilty plea the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

5. INADMISSIBILITY OF PLEA DISCUSSIONS. If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible in any criminal or civil action or administrative proceeding.

Rule 10. MOTIONS AND PLEADINGS.

1. PLEADINGS AND MOTIONS. Pleadings in criminal proceedings shall be the indictment and the information, and the pleas entered pursuant to rule eight (8). Demurrers, motions to quash, and motions to set aside are abolished, and defenses and objections raised before trial which heretofore could have been raised under them shall be raised by motion to dismiss, or a motion to grant appropriate relief as the case may be.

2. PRETRIAL MOTIONS. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raised prior to trial:

a. Defenses and objections based on defects in the institution of the prosecution.

b. Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding).

c. Motions to suppress evidence on the ground that it was illegally obtained.

d. Requests for discovery.

e. Requests for a severance of charges or defendants.

f. Motion for change of venue or change of judge.

3. EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS.

Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial under this rule shall constitute waiver thereof, but the court for cause, upon motion supported by affidavit, may grant relief from such waiver.

4. TIME OF FILING. Motions hereunder, except a motion for a bill of particulars ~~or a change of venue~~, shall be filed either within ~~thirty~~ 45 days after arraignment or prior to the impaneling of the trial jury, whichever event occurs earlier, unless the period for filing is extended by the court for good cause shown.

5. BILL OF PARTICULARS. When an indictment or information charges an offense in accordance with this rule but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare his or her defense, the court may, on written motion of the defendant, require the county attorney to furnish the defendant with a bill of particulars containing such particulars as may be necessary for the preparation of the defense. A motion for a bill of particulars may be made any time prior to or within ~~ten~~ 20 days after arraignment unless the time be extended by the court for good cause shown. A plea of not guilty at arraignment does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The county attorney may furnish a bill of particulars on the county attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may be likewise ordered by the court or voluntarily furnished, or a new bill may be substituted for a bill already furnished. At the trial the state's evidence shall be confined to the particulars of the bill or bills.

6. DISMISSING INDICTMENT OR INFORMATION.

a. IN GENERAL. If it appears from the bill of particulars furnished pursuant to this rule that the particulars stated do not constitute the offense charged in the indictment or information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute

of limitations, the court may and on motion of defendant shall dismiss the indictment or information unless the county attorney shall furnish another bill of particulars which so states the particulars as to show that the particulars constitute the offense charged in the indictment or information and that the offense was committed by the defendant and that it is not barred by the statute of limitations.

b. INDICTMENT. A motion to dismiss the indictment may be made on one or more of the following grounds:

(1) When the minutes of the evidence of witnesses examined before the grand jury are not returned therewith.

(2) When it has not been presented and marked "filed" as prescribed.

(3) When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

(4) When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

(5) That the grand jury was not selected, drawn, summoned, impaneled, or sworn as prescribed by law.

c. INFORMATION. A motion to dismiss the information may be made on one or more of the following grounds:

(1) When the minutes of evidence have not been filed with the information.

(2) When the information has not been filed in the manner required by law.

(3) When the information has not been approved as required under rule five (5).

d. TIME OF MOTION. Entry of a plea of not guilty at arraignment does not waive the right to move to dismiss the indictment or information if such motion is timely filed within this rule.

7. EFFECT OF DETERMINATION. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that the defendant's bail

be continued for a specified period pending the filing of a new indictment or information if the same was dismissed by the court, or the amendment of any such pleading if the defect is subject to correction by amendment. The new information or indictment must be filed within ~~thirty~~ ten days of the dismissal of the original indictment or information and the defendant must be brought to trial within the time limits specified in rule twenty-seven (27), rules of criminal procedure.

8. RULING ON MOTION. A pretrial motion shall be determined ~~before trial~~ promptly. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

9. MOTION FOR CHANGE OF VENUE OR CHANGE OF JUDGE.

~~a. TIME OF MOTION. A motion for change of venue shall be made as soon as the grounds thereof appear. Such motion may be made before, at, or after arraignment, until the time the jury is impaneled and sworn.~~

~~b~~ a. GROUNDS. The court upon motion shall transfer the proceeding to another county if the court is satisfied that there exists such prejudice in the ~~original~~ county in which trial is to be held that a fair and impartial trial cannot be had ~~before~~ there by reason of the prejudice of the judge, or ~~to~~ excitement or prejudice against ~~the defendant~~ a party in such county. The ~~petition~~ motion shall be verified on information and belief by the affidavit of the ~~petitioners~~ movant. If sustained on the ground of excitement and prejudice in the county, it must be transferred to another county in which no such objection exists.

If sustained on the ground of prejudice of the judge, the chief judge of the district shall name a new presiding judge and the trial shall not be moved to a different county.

~~c. SECOND CHANGE. When a change in place of trial has been granted to either the prosecution or the defense, the other party to whom no change has been granted, may, in the county to which the case has been sent, petition for a change in the same manner as though said county was the county in which the case was first pending. In such case, if the change be granted, the case shall not be sent to the county in which it was originally pending.~~

~~d~~ b. PROCEEDINGS ON TRANSFER. When a transfer of the case is ordered to another county the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the county to which transfer of the case is allowed, and upon such delivery with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, which shall be allowed by the court trying the case, may be recovered by the county to which the case is transferred from the county in which the prosecution was commenced. The county attorney in the original county shall be responsible for the prosecution in such other county.

10. PLEADINGS OF DEFENDANT.

a. ALIBI.

(1) NOTICE. A defendant who intends to offer evidence of an alibi defense shall, within the time provided for the making of pretrial motions or at such later time as the court shall direct, inform the attorney for the government of such intention and file such notice. The notice shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi. In the event that a defendant shall file such notice the attorney for the government shall file and serve upon the defendant the names and addresses of the witnesses the government proposes to offer in rebuttal to discredit the defendant's alibi. Such service shall be completed not less than five days after receipt of defendant's witness list, or within such other time as the court may direct. If either party shall fail to abide by the time periods heretofore described, the proponent must move the court for leave to introduce such evidence, showing diligence supported by affidavit.

(2) FAILURE TO COMPLY. Upon the failure of either party to comply with the requirements of this rule, the court shall exclude the testimony of any witness offered by such party to establish or rebut the defendant's alibi. This rule shall not limit the right of the defendant to testify in his own behalf.

b. INSANITY *AND DIMINISHED RESPONSIBILITY.*

(1) DEFENSE OF INSANITY *AND DIMINISHED RESPONSIBILITY.* If a defendant intends to rely upon the defense of insanity *or diminished responsibility* at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions ~~or at such later time as the court may direct, inform~~ *give notice to* the attorney for the government of such intention and file such notice. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

~~(2) MENTAL DISEASE OR DEFECT INCONSISTENT WITH THE MENTAL ELEMENT REQUIRED FOR THE OFFENSE CHARGED. If a defendant intends to introduce expert testimony relating to a mental disease, defect, or diminished mental capacity, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, inform the attorney for the government of such intention and file such notice. The court may for good cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.~~

~~(3)~~(2) STATE'S RIGHT TO EXPERT EXAMINATION. Where a defendant has ~~indicated~~ *given notice of* the use of the defense of insanity *or diminished responsibility,* and ~~has engaged~~ *intends to call* an expert ~~or experts for the purpose of examining him on the~~ *witness or witnesses on that* issue ~~of insanity,~~

at trial the defendant shall within the time provided for the filing of pretrial motions notify the attorney for the government of the name of each such witness. Upon such notice, or as otherwise appropriate. the court ~~shall~~ *may, upon application,* order the examination of the defendant by a state-named expert or experts *whose names shall be disclosed to the defendant prior to examination.*

~~Rule 14. SUPPRESSION OF EVIDENCE.~~

~~1. MOTION TO SUPPRESS EVIDENCE. A person aggrieved by an unlawful search and seizure may move to suppress for use as evidence anything so obtained on any of the following grounds:~~

~~a. The property was illegally seized without a warrant.~~

~~b. The warrant is insufficient on its face.~~

~~c. The property seized is not that described in the warrant.~~

~~d. There was not probable cause for believing the existence of the grounds on which the warrant was issued.~~

~~e. The warrant was illegally executed. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored to its owner or legal custodian unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial.~~

~~The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was unaware of the factual grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing, upon good cause supported by affidavit.~~

~~2. APPEAL OF INTERLOCUTORY ORDER. Any party aggrieved by an interlocutory order affecting the validity of a search warrant or the suppression of evidence, except in simple misdemeanors, may apply for a writ of certiorari to the supreme court or any justice thereof to review the order in advance of trial.~~

Rule 11. PRE-TRIAL JUDGMENT OF ACQUITTAL

1. TIME FOR FILING. On or before the time set for the filing of motions under rule 10, or within five (5) days following the granting of a motion to suppress, or at a later time before trial if the court permits in the interest of justice, the defendant may move for a pre-trial judgment of acquittal.

2. CONTENT OF MOTION. The motion shall particularize:

a. The grounds upon which it is based, and shall specify those elements of the offense charged or other necessary parts of the State's case as to which it is believed the prosecuting attorney's evidence is insufficient;

b. Any matters contained in the minutes to the indictment or information, any depositions taken and any statements, documents, or other materials discovered under these rules which are believed to disprove or show the absence of the elements or other necessary parts specified;

c. Any lesser included offense as to which it is believed the prosecuting attorney's evidence is also insufficient for the grounds particularized.

3. PRODUCTION BY PROSECUTING ATTORNEY. If the grounds stated in the motion, if true, would justify granting the motion, the court shall direct the prosecuting attorney to produce for examination by the court:

a. The matters, statements, documents, materials, and depositions particularized in the defendant's motion;

b. Other matters the prosecuting attorney intends to use at trial and statements or depositions of persons he intends to call as witnesses at the trial, which he believes establish the elements or other necessary parts specified by the defendant under sub-paragraph 1(a).

4. RULING. The court's ruling on the motion shall be made upon the basis of the materials produced by the prosecuting attorney under sub-paragraph 2, except for that evidence and the statements and depositions relating to that potential testimony which would be inadmissible at trial. The court shall rule on the motion as to the offense charged and any lesser included offense particularized in the defendant's motion and shall grant the motions as to any offense for which it appears, for the reasons particularized in the defendant's motion there is not evidence which would reasonably permit a finding of guilty beyond a reasonable doubt.

5. EFFECT OF ACQUITTAL. If the motion is granted, the acquittal has the same effect as an acquittal at trial, except:

a. The order granting the motion may be appealed by the State and, in the event of a reversal, the case shall be remanded for further proceedings, including trial, notwithstanding any rule or statute which conflicts herewith.

b. The acquittal does not bar prosecution for any lesser included offense as to which the court did not also direct an acquittal.

6. NO APPEAL BY DEFENDANT. The defendant may not bring an interlocutory appeal from an order denying his pre-trial motion for acquittal, nor may the defendant seek review of an order denying his pre-tri

motion for acquittal on an appeal from a judgment on a verdict of guilty, but the order does not bar the defendant from moving for acquittal at trial under rule 18(8) or after trial under rule 23.

Rule 12. DEPOSITIONS.

1. BY DEFENDANT. A defendant in a criminal case, ~~either after preliminary information, indictment, or information,~~ may examine all witnesses listed by the state on the indictment or information or notice of additional witnesses, conditionally or on notice or commission, in the same manner and with like effect *and with the same limitations* as in civil actions.

Depositions before indictment or trial information may only be had with leave of court.

When the state receives notice that a deposition will be taken of a witness listed on the indictment, information or notice of additional witnesses, the state may object that the witness is (a) a foundation witness or (b) has been adequately examined on preliminary hearing. The court shall immediately determine whether discovery of said witness or

witnesses is necessary in the interest of justice and shall allow or disallow said deposition.

2. SPECIAL CIRCUMSTANCES. Whenever due to special circumstances of the case it is in the interest of justice that the testimony of a prospective witness not included in subsections one (1) or three (3) of this rule be taken and preserved for use at trial, the court may upon motion of a party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place.

~~For purposes of this subsection, special circumstances shall be deemed to exist, and the court shall order that depositions be taken, only upon the showing of necessity arising from either the following circumstances:~~

~~a. The information sought by way of deposition cannot adequately be disclosed by a bill of particulars, or by voluntary statements.~~

~~b. Other just cause necessitating discovery by deposition.~~

3. ~~BY STATE.~~ *LISTING OF DEFENDANT'S WITNESSES.* At the taking of a deposition by a defendant under subsection one (1) or two (2) of this rule, the defendant shall list all witnesses, *except the defendant,* expected to be called for the defense. There shall be a continuing duty throughout trial to disclose additional defense witnesses, and such witnesses shall be subject to being deposed by the state.

4. PERPETUATING TESTIMONY. A person apprehensive of a criminal prosecution may perpetuate testimony in his or her favor in the same manner and with like effect, as may be done in apprehension of any civil action.

~~Rule 13. DISCOVERY.~~

1. WITNESSES EXAMINED BY THE PROSECUTING ATTORNEY. When a witness subpoenaed by the prosecuting attorney pursuant to rule five (5) is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is

required by this rule.

2. DISCLOSURE OF EVIDENCE BY THE GOVERNMENT UPON DEFENSE MOTION OR REQUEST.

a. DISCLOSURE REQUIRED UPON REQUEST.

(1) Upon pretrial motion of a defendant the court shall order the attorney for the government to permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the government, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the government intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the government intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon motion of any defendant the court shall order the attorney for the government to permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the government intends to offer in evidence at the trial, and the substance of any oral statement which the government intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a government agent.

(3) Upon motion of the defendant, the court shall order the government to furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the government.

b. DISCRETIONARY DISCOVERY.

(1) Upon motion of the defendant the court may order the attorney for the government to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the government in connection with the alleged crime. The court may further allow the defendant to inspect and copy

books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the government, and which are material to the preparation of his or her defense, or are intended for use by the government as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the government to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the government.

3. DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

a. DOCUMENTS AND TANGIBLE OBJECTS. If the court grants the relief sought by the defendant under subdivision two (2), paragraph b, subparagraph one (1), of this rule, the court may, upon motion of the government, order the defendant to permit the government to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

b. REPORTS OF EXAMINATIONS AND TESTS. If the court grants relief sought by the defendant under subdivision two (2), paragraph b, subparagraph ~~one (1)~~ *two (2)*, of this rule, the court may, upon motion of the government, order the defendant to permit the government to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to his or her testimony.

c. TIME OF MOTION. A motion for the relief provided under subdivision ~~two (2)~~ *three (3)* of this rule shall be made, if at all,

within ~~five~~ *ten* days after any order granting similar relief to the defendant *unless extended by the court for good cause shown.*

~~d. FAILURE TO EMPLOY EVIDENCE. When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.~~

4. CONTINUING DUTY TO DISCLOSE. If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly notify the other party of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

5. REGULATION OF DISCOVERY.

a. PROTECTIVE ORDERS. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. In addition to any other grounds for issuing an order pursuant to this paragraph, the court may limit or deny discovery or inspection, or limit the number of depositions to be taken if the court determines that any of the following exist:

(1) That granting the motion will unfairly prejudice the nonmoving party and will deny that party a fair trial.

(2) That the motion is intended only as a fishing expedition and that granting the motion will unduly delay the trial and will result in unjustified expense.

(3) That the granting of the motion will result in the disclosure of privileged information.

(4) That the granting of the motion will create a probability of fabrication on the part of the moving party.

~~Upon motion by a party the court may permit a party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made~~

~~available to the appellate court in the event of an appeal.~~

b. TIME, PLACE AND MANNER OF DISCOVERY AND INSPECTION. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

c. FAILURE TO COMPLY. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may *upon timely application* order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

d. SECRECY OF GRAND JURY. Except where specific provisions require otherwise, grand jury proceedings remain confidential. However, any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice.

No grand juror shall be questioned for anything he or she may say or any vote the juror may give in the grand jury ~~relative to a matter legally pending before it, except for~~ perjury of which the juror may have been guilty in making an accusation, or in giving testimony to his or her fellow jurors.

Rule 14. SUBPOENAS.

1. FOR WITNESSES. A magistrate in a criminal action before him or her, and the clerk of court in any criminal

action pending therein, shall issue blank subpoenas for witnesses, signed by him or her, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or the defendant's attorney or the attorney for the state.

2. FOR PRODUCTION OF DOCUMENTS--DUCES TECUM. A subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under the witness' control which he or she is bound by law to produce as evidence. The court on motion may quash or modify the subpoena if compliance would be unreasonable or oppressive.

3. SERVICE. A subpoena may be served in any part of the state. It may be served by any adult person. A peace officer making service in a criminal case must serve without delay in his or her county, city, or town any subpoena delivered to him for service and make a written return stating the time, place, and manner of service. When service is made by other than a peace officer, proof thereof shall be by affidavit. Service is made by showing the original to the witness and delivering a copy to him or her. If a witness conceals himself or herself to avoid service of a subpoena, the officer may break open doors or windows for the purpose of making service.

4. DEPOSITIONS. An order to take a deposition authorizes the clerk of the court for the county in which the deposition is to be taken to issue subpoenas for the persons named or described therein.

5. SANCTIONS FOR REFUSING TO APPEAR OR TESTIFY. Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt. The attendance of a witness who so fails to appear may be coerced by warrant.

Rule 15. PRETRIAL CONFERENCE.

1. ~~WHEN HELD. Where a plea of other than guilty to an~~ indictment or trial information is entered on behalf of the defendant, the court may order all parties to the action to appear before it for a conference to consider such matters as will promote a fair and expeditious trial.

2. DISCUSSIONS AND RECORD. The conference may explore such matters as amendment of pleadings, agreement to the introduction into evidence of photographs or other exhibits to which there is no objection, submission of requested jury instructions, and any other matters appropriate for discussion which may aid and expedite trial of the case.

3. STIPULATIONS AND ORDERS. The court shall make an order reciting any action taken at the conference which will control the subsequent course of the action relative to matters it includes, unless modified to prevent manifest injustice. ~~A stipulation entered into at such conference shall bind the defendant at trial, on appeal, or in a post-conviction proceeding only if signed by both the defendant and the defendant's attorney and filed with the clerk.~~

Rule 16. TRIAL BY JURY OR COURT.

1. TRIAL BY COURT ALLOWED. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing.

2. FINDINGS. In a case tried without a jury the court shall make a general finding. Where requested by any party before or during trial, the court shall find the facts specially and in writing, separately stating its conclusions of law and directing an appropriate judgment. A request for findings is not a condition precedent for review of the judgment.

Rule 17. JURIES.

1. RULES FOR DRAWING. The rules for drawing the jury shall be the same as those provided in civil procedure.

2. COMPLETION OF PANEL. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapters upon selecting, drawing, and summoning juries.

3. CHALLENGES TO THE PANEL. All the provisions of law relating to challenges to the panel of trial jurors in civil procedure, the grounds therefor, the manner of exercising the same, and the effect thereof, shall apply to the panel of trial jurors in criminal cases.

4. CHALLENGES TO INDIVIDUAL JUROR. A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory.

5. CHALLENGES FOR CAUSE. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

a. A previous conviction of the juror of a felony.

b. A want of any of the qualifications prescribed by statute to render a person a competent juror.

c. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render the juror incapable of performing the duties of a juror.

d. Affinity or consanguinity, within the fourth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

e. Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his or her employ on wages.

f. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by the defendant in a criminal prosecution.

g. Having served on the grand jury which found the indictment.

h. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

i. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

j. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

k. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.

l. Because of the juror being bail for any defendant in the indictment.

m. Because the juror is defendant in a similar indictment, or complainant or private prosecutor against the defendant or any other person indicted for a similar offense.

n. Because the juror is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

o. Because the juror has been a witness, either for or against the defendant, on the preliminary hearing or before the grand jury.

p. Having requested, directly or indirectly, that his or her name be returned as a juryman for the regular biennial period.

6. EXAMINATION OF JURORS. Upon examination the jurors shall be sworn. If an individual juror is challenged, the juror may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but the juror's answer shall not afterwards be testimony against him or her. Other witnesses may also be examined on either side. The rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the fact, and must allow or disallow the challenge.

7. ORDER OF CHALLENGES FOR CAUSE. The state shall first complete its challenge for cause, and the defendant afterwards, until sixteen jurors have been obtained against whom no cause of challenge has been found to exist.

8. ORDER OF CHALLENGES IN GENERAL. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the

causes of challenge belonging to the same class: To the panel; to an individual juror for cause; to an individual juror peremptorily.

9. PEREMPTORY CHALLENGES. Peremptory challenges shall be exercised in the same manner as is provided in the trial of civil actions.

10. PEREMPTORY CHALLENGES--NUMBER. If the offense charged in the indictment or information is or may be punishable with imprisonment for life, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors.

If the offense charged be a felony, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged be a misdemeanor, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors.

11. MULTIPLE CHARGES. If the indictment charges different offenses in different counts, the state and the defendant shall each have that number of peremptory challenges which they would have if the highest grade of offense charged in the indictment were the only charge.

12. MULTIPLE DEFENDANTS. In a case where more than one defendant is tried, each defendant shall have one-half the number of challenges allowed in subdivision eleven (11) of this rule. The state shall be limited to the challenges and strikes specified in subdivision eleven (11). The defendants collectively shall be limited to two strikes.

13. CLERK TO PREPARE LIST--PROCEDURE. The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties, commencing with the state, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list.

14. VACANCY FILLED. After each challenge, sustained for cause, or made peremptorily as indicated on the list, another

juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors.

15. READING OF NAMES. After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected.

16. JURORS SWORN. When twelve jurors are accepted they shall be sworn to try the issues.

17. ALTERNATE JURORS. The court may impanel one or more alternate jurors whose qualifications, powers, functions, facilities, and privileges shall be the same as regular jurors. After the regular jury is selected, the clerk shall draw the names of three more persons if one alternate juror is desired, or four more persons if two alternate jurors are desired, and so on in like proportion, who are to serve under this rule, who shall be sworn and subject to examination and challenge for cause as provided in this rule. Each party must then strike off one such name, and the one or two or appropriate number remaining shall be sworn to try the case with the regular jury, and sit at the trial. Alternate jurors shall, in the order they were drawn, replace any juror who becomes unable to act, or is disqualified, before the jury retires, and if not so needed shall then be discharged.

Rule 18. TRIAL.

1. ORDER OF TRIAL AND ARGUMENTS.

a. ORDER OF TRIAL. The jury having been impaneled and sworn, the trial must proceed in the following order:

(1) READING INDICTMENT AND PLEA. The clerk or prosecuting attorney must read the indictment or the supplemental indictment as required under the provision of the Code, and state the defendant's plea to the jury.

(2) STATEMENT OF STATE'S EVIDENCE. The prosecuting attorney may briefly state the evidence by which he or she expects to sustain the indictment.

(3) STATEMENT OF DEFENDANT'S EVIDENCE. The attorney for the defendant may then briefly state his or her defense, or the attorney for the defendant may waive the making of such statement; ~~the attorney for the defendant may reserve the right to make such statement to a time immediately prior to presentation of defendant's evidence~~.

(4) OFFER OF STATE'S EVIDENCE. The state may then offer the evidence in support of the indictment.

(5) OFFER OF DEFENDANT'S EVIDENCE. The defendant or the defendant's counsel may then offer evidence in support of his or her defense.

(6) REBUTTING OR ADDITIONAL EVIDENCE. The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case.

b. ORDER OF ARGUMENT--ARGUMENTS. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the prosecuting attorney must commence, the defendant follow by one or two counsel, at the defendant's option, unless the court permits the defendant to be heard by a larger number, and the prosecuting attorney conclude, confining himself to a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each.

2. ADVANCE NOTICE OF EVIDENCE SUPPORTING INDICTMENTS OR INFORMATIONS. The prosecuting attorney, in offering trial evidence in support of an indictment, ~~shall not be permitted~~ to introduce any witness the minutes of whose testimony was not presented with the indictment to the court; in the case of informations, a witness may testify in support thereof if the witness' identity and a minute of the witness' evidence has been given pursuant to these rules. However, these provisions are subject to the following exception: Additional witnesses *in support of the indictment or trial information* may be presented by the prosecuting attorney if he or she has given the defendant's attorney of record, or the defendant if he or she has no attorney, a minute of such

witness' testimony, at least ~~seven~~ ten days before the commencement of the trial.

3. FAILURE TO GIVE NOTICE. Whenever the prosecuting attorney desires to ~~introduce evidence~~ call witnesses to support the indictment, of which he or she shall not have given ~~seven~~ ten days' notice because of insufficient time therefor since the prosecutor learned said ~~evidence~~ testimony could be obtained, the prosecutor may move the court for leave to introduce such ~~evidence~~ testimony, giving the same particulars as in the former case, and showing diligence, supported by affidavit. Except where the ~~evidence~~ testimony goes to merely formal matters, if the court sustains said motion, the defendant shall elect whether said cause shall be continued on his motion, or the witness shall then testify. If said defendant shall not elect to have said cause continued, the prosecuting attorney may examine said witness in the same manner and with the same effect as though ~~seven~~ ten days' notice had been given defendant or the defendant's attorney as hereinbefore provided, except the prosecuting attorney, in the examination of witnesses, shall be strictly confined to the matters set out in his or her motion.

4. REPORTING OF TRIAL. All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making of such reports and translation of the record, and in all other respects, apply to the trial of criminal actions.

5. THE JURY UPON TRIAL.

a. VIEW.

(1) WHEN TAKEN. ~~When~~ Upon motion made, when the court is of the opinion that it is proper, the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred. It may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose.

(2) ATTENDING OFFICERS. The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, or to do so

themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unnecessary delay at a specified time.

b. JUROR MAY NOT BE WITNESS. A member of the jury may not testify as a witness in the trial of the case in which he or she is sitting as a juror. If the juror is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

c. ALTERNATE JURORS; SEPARATION AND DELIBERATION OF JURORS. The court may impanel alternate jurors, which may replace jurors originally selected, in the manner provided in civil cases. The jurors shall be kept together unless the court permits the jurors to separate as in civil cases; and the officers having charge of the jury shall suffer no person to communicate with them except as provided for in civil cases.

d. ADMONITION TO JURORS. The jury, whether permitted to separate or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury.

e. NOTES TAKEN BY JURORS DURING TRIAL; EXHIBITS USED DURING DELIBERATIONS. Notes may be taken by jurors during the testimony of witnesses. All jurors shall have an equal opportunity to take notes. The court shall instruct the jury to mutilate and destroy any notes taken during the trial at the completion of the jury's deliberation. Upon retiring for deliberations the jury may take with it all papers and

exhibits which have been received in evidence, and the court's instructions. Provided, however, the jury shall not take with it depositions, nor shall it take original public records and private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

f. INSTRUCTIONS. Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. After hearing the charge, the jury may either decide in court or retire for deliberation.

g. REPORT FOR INFORMATION. After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required may be given, in the discretion of the trial court. Where further information as to the testimony which was given at trial is taken by the jury, this shall be accomplished by the court reporter or other appropriate official reading from the reporter's notes. Where the court gives the jury additional instructions, this shall appear of record. Provided, that the procedures described in this section shall take place in the presence of counsel for the defense and prosecution, or after oral notice to the county attorney and defendant's counsel and provision of an opportunity to same to be present.

h. SEPARATION OF JURORS. On final submission, the jury shall retire for deliberation, and be kept together in charge of an officer until they agree on a verdict or are discharged by the court, unless the court permits the jurors to separate temporarily overnight, on weekends or holidays, or in emergencies. During their deliberations, the officer in charge must not suffer any communication to be made to them, nor make any himself or herself, except to ask them if they have agreed on a verdict, unless by order of court; nor communicate

to any person the state of their deliberations, or the verdict agreed upon before it is rendered.

6. RETRIAL OF DEFENDANTS WHEN ORIGINAL JURY IS DISCHARGED, AND IN OTHER CASES.

a. ILLNESS OF JURORS AND OTHER CASES. The court may discharge a jury because of any accident or calamity requiring it, or by consent of all parties, or when on an amendment a continuance is ordered, or if they have deliberated until it satisfactorily appears that they cannot agree. The case shall be retried immediately or at a future time, as the court directs.

b. LACK OF JURISDICTION; NO OFFENSE CHARGED. The court may also discharge the jury where it appears that it has no jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law.

c. CRIME COMMITTED IN ANOTHER STATE. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, the offense being committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the prosecuting attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

d. NO OFFENSE CHARGED--RESUBMISSION. If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his or her bail, if any, exonerated, or, if the defendant has deposited money instead of bail, that the money deposited be refunded, or that any conditions upon the defendant's release from custody be discharged. If in the court's opinion a new indictment can be framed upon which the defendant can be legally convicted, the court may direct that the case be submitted to the same or another grand jury.

7. THE TRIAL JUDGE.

a. COMPETENCY OF JUDGE AS WITNESS. The judge presiding

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at the trial shall not testify in that trial as a witness. If the judge is called to testify, no objection need be made in order to preserve the point.

b. DISABILITY OF TRIAL JUDGE.

(1) DURING TRIAL. If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying that he or she has familiarized himself or herself with the record of the trial, may proceed with and finish the 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 guilty, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may in his or her discretion grant a new trial.

c. ADJOURNMENTS DECLARED BY TRIAL COURT. While the jury is absent, the court may adjourn from time to time as to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged.

8. MOTION FOR JUDGMENT OF ACQUITTAL.

a. MOTION BEFORE SUBMISSION TO JURY. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed ~~if the evidence is insufficient to sustain a conviction of~~ such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecuting attorney is not granted, the defendant may offer evidence without having waived his or her right to rely on such motion.

b. RESERVATION OF DECISION ON MOTION. If a motion for judgment of acquittal 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.

9. TRIAL OF QUESTIONS INVOLVING PRIOR CONVICTIONS. After conviction of the primary or current offense, but prior to pronouncement of sentence, if the indictment or information alleges one or more prior convictions which by the Code subjects the offender to an increased sentence, the offender shall have the opportunity in open court to affirm or deny that he or she is identical with the person previously convicted, or that he or she was not represented by counsel. If the offender denies he or she is the person previously convicted, sentence shall be postponed for such time as to permit a trial before a jury on the issue of the offender's identity with the person previously convicted. Other objections shall be heard and determined by the court, and these other objections shall be asserted prior to trial of the substantive offense in the manner presented in ~~rule ten (10)~~ *these rules*. On the issue of identity, the court may in its discretion reconvene the jury which heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled. If the offender is found by the jury to be the person previously convicted, or if the offender acknowledged that he or she is such person, the offender shall be sentenced as prescribed in the Code.

Rule 19. WITNESSES.

1. COMPETENCY OF WITNESSES; CROSS-EXAMINATION OF THE ACCUSED. The rules for determining the competency of witnesses ~~in civil actions are, so far as they are in their nature~~ applicable, extended also to criminal actions and proceedings, except as otherwise provided. A defendant in a criminal action or proceeding shall be a competent witness in his or her own behalf, but cannot be called by the state. If the defendant offers himself or herself as a witness, the defendant may be cross-examined as an ordinary witness, but the state shall be strictly confined therein to the matters testified

to in the examination in chief.

2. COMPELLING ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE TO PROCEEDINGS IN IOWA. The presence and testimony of a witness located outside the state may be secured through the uniform act to secure witnesses from without the state set forth in division nineteen (XIX) of this chapter.

3. IMMUNITY.

a. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having *properly* asserted that such answer or evidence would tend to render him or her criminally liable, incriminate him or her or violate his or her right to remain silent, the witness must knowingly waive his right or:

(1) A county attorney or the attorney general must file with a district court judge or district associate judge a verified application setting forth that:

The testimony of the witness, or the production of documents or other evidence in the possession of such witness, or both, is necessary and material; and

The witness has refused to testify, or to produce documents or other eivdence, or both, upon the ground that such testimony or evidence would tend to incriminate him or her; and

It is the considered judgment of the county attorney or attorney general that justice and the public interest require the testimony, documents or evidence in question.

(2) The application, transcripts and orders required by this subsection shall be filed as a separate case in the criminal docket entitled "In the matter of the testimony of (Name of witness) " and shall be indexed in the criminal index under the name of the witness. Any testimony given in support of the application for immunity shall be reported and a transcript of the testimony shall be filed with the application.

(3) Upon consideration of such application the judge shall enter an order granting the witness immunity to prosecution for any crime or public offense concerning which the witness was compelled to give competent and relevant testimony or

to produce competent and relevant evidence.

(4) Testimony, documents or evidence which has been given by a witness granted immunity shall not be used against the witness in any trial or proceeding, or subject the witness to any penalty or forfeiture; provided, that such immunity shall not apply to any prosecution or proceeding for a perjury or a contempt of court committed in the course of or during the giving of such testimony.

b. A complete verbatim transcript of testimony given pursuant to an order of immunity shall be made and filed with the application and the order of court. The application, order granting immunity and all transcripts filed shall be sealed upon motion of the defendant, county attorney, or attorney general and shall be opened only by order of the court. This section shall not bar the use of the transcript as evidence in any proceeding except the transcript shall not be used in any proceeding against the witness himself *except for perjury or contempt.*

c. Whoever shall refuse to testify or to produce evidence after having been granted immunity as aforesaid shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify, a claim to privilege against self-incrimination notwithstanding.

4. WITNESSES FOR INDIGENTS. Counsel for a defendant who is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request compensation in a written application. Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain such witnesses on behalf of the defendant. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them pursuant to division fifteen (XV) of this chapter.

Rule 20. EVIDENCE.

1. RULES. The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of ~~this rule~~ *these rules*

2. QUESTIONS OF LAW AND FACT. Upon jury trial of a criminal case, questions of law are to be decided by the court, saving the right of the defendant and state to object; questions of fact are to be tried by jury.

3. CORROBORATION OF ACCOMPLICE OR PERSON SOLICITED. A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

4. CONFESSION OF DEFENDANT. The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense.

~~5. PRIOR INCONSISTENT STATEMENT UNDER OATH. Evidence of a statement made under oath or affirmation by a witness is admissible if this prior statement is inconsistent with his testimony at a trial or hearing, and the witness is given an opportunity to explain or to deny the statement.~~

~~6.~~ EVIDENCE OF PAST SEXUAL CONDUCT IN TRIALS OF SEXUAL ABUSE. In prosecutions for the crime of sexual abuse, evidence of the prosecuting witness' previous sexual conduct shall not be admitted, nor reference made thereto in the presence of the jury, except as provided herein. Evidence of the prosecuting witness' previous sexual conduct shall be admissible if the defendant shall make application to the court ~~before or during the~~ *not later than five days before* trial.

The court shall conduct a hearing in camera as to the relevancy of such evidence of previous sexual conduct, and shall limit the questioning and control the admission and exclusion of evidence upon trial.

In no event shall such evidence of previous sexual conduct of the prosecuting witness committed more than one year prior to the date of the alleged crime be admissible upon the trial, except previous sexual conduct with the defendant. Nothing in this section shall limit the right of either the state

or the accused to impeach credibility by the showing of prior felony convictions.

Rule 21. VERDICT.

1. FORM OF VERDICTS. In open court the jury must render a verdict of "guilty", which imports a conviction, or "not guilty" or "not guilty by reason of insanity" which imports acquittal, on the material allegations in the charge; however, upon a plea of former conviction or acquittal of the same offense, it shall be "for the state" or "for the defendant". The jury shall return a verdict determining the degree of guilt in cases submitted to determine the grade of the offense.

2. ANSWERS TO INTERROGATORIES. It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required.

3. FINDING OFFENSE OF DIFFERENT DEGREE; INCLUDED OFFENSES. Upon trial of an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense when such attempt is prohibited by law. In all cases, the defendant may be found guilty of any offense the commission of which is necessarily included in that with which the defendant is charged.

4. SEVERAL DEFENDANTS. On an indictment or information against several defendants, if the jury cannot agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted.

5. RETURN OF JURY; READING AND ENTRY OF VERDICT; UNANIMOUS VERDICT. The jury, agreeing on a verdict unanimously, shall

bring the verdict into court, where it shall be read to them, and inquiry made if it is their verdict. A party may then require a poll asking each juror if it is his or her verdict. If any juror express disagreement on such poll or inquiry, the jury shall be sent out for further deliberation; otherwise, the verdict is complete and the jury shall be discharged. When the verdict is given and is such as the court may receive, the clerk may enter it in full upon the record.

6. VERDICT INSUFFICIENT; RECONSIDERATION; INFORMAL VERDICT. If the jury renders a verdict which is in none of the forms specified in this rule, or a verdict of guilty in which it appears to the court that the jury was mistaken as to the law, the court may direct the jury to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood. If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal.

7. DEFENDANT DISCHARGED ON ACQUITTAL. If judgment of acquittal is given on a general verdict of not guilty, and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as the judgment is given.

8. ACQUITTAL ON GROUND OF ~~MENTAL ILLNESS~~ *INSANITY OR DIMINISHED RESPONSIBILITY*; COMMITMENT. If the defense is ~~mental illness~~ *insanity or diminished responsibility* of the defendant, the jury must be instructed, if it acquits the defendant on that ground, to state that fact in its verdict. Upon hearing, the court may thereupon, if the defendant is found to be dangerous to the public peace and safety, order the defendant committed to one of the mental health institutes or the Iowa security medical facility, or retained in custody, until he or she demonstrates good mental health and is considered no longer dangerous to the public peace and safety or to himself.

9. PROOF NECESSARY TO SUSTAIN VERDICT OF GUILTY.

a. REASONABLE DOUBT. Where there is a reasonable doubt of the defendant being proven to be guilty, the defendant

is entitled to an acquittal.

b. REASONABLE DOUBT AS TO DEGREE. Where there is a reasonable doubt of the degree of the offense of which the defendant is proved to be guilty, the defendant shall only be convicted of the degree as to which there is no reasonable doubt.

Rule 22. JUDGMENT.

1. ENTRY OF JUDGMENT OF ACQUITTAL OR CONVICTION. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court must fix a date for pronouncing judgment, which must be within a reasonable time but not less than eight days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time.

2. FORFEITURE OF BAIL; WARRANT OF ARREST. If the defendant has been released on bail, or has deposited money instead thereof, and does not appear for judgment when the defendant's personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant into one or more counties for the defendant's arrest, which may be substantially in the form illustrated in the appendix of forms to these rules. The warrant may be served in any county in the state. The officer must arrest the defendant and bring the defendant before the court, or commit ~~the defendant to the officer mentioned in the warrant.~~

3. IMPOSITION OF SENTENCE.

a. INFORMING THE DEFENDANT. When the defendant appears for judgment, he or she must be informed by the court or the clerk under its direction, of the nature of the indictment, his or her plea, and the verdict, if any thereon, and be asked whether he or she has any legal cause to show why judgment should not be pronounced against him.

b. WHAT MAY BE SHOWN FOR CAUSE. The defendant may show

for cause against the judgment that he or she is insane, or any sufficient ground for a new trial, or in arrest of judgment.

c. INSANITY. If the court is of the opinion that there is reasonable ground for believing the defendant insane, the question of the defendant's insanity shall be determined as provided in the Code, and if the defendant is found to be insane, such proceedings shall be had as are herein directed.

d. JUDGMENT ENTERED. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. Prior to such rendition, counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment. In every case the court shall include in the judgment entry the number of the particular section of the Code under which the defendant is sentenced.

e. NOTIFICATION OF RIGHT TO APPEAL. After imposing sentence in a case, the court shall advise the defendant of his or her *statutory* right to appeal ~~as provided in rule fifteen point one (15.1) of the rules of the supreme court~~.

f. CLERICAL MISTAKES. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

g. WITHDRAWAL OF PLEA OF GUILTY. At any time before judgment, the court may permit the plea of guilty to be withdrawn and other plea or pleas substituted.

~~Rule 23. MOTIONS AFTER TRIAL.~~

1. IN GENERAL. Permissible motions after trial include motions for new trial, motions in arrest of judgment, and motions to correct a sentence.

2. NEW TRIAL.

a. PROCEDURAL STEPS IN SEEKING OR ORDERING NEW TRIAL. The application for a new trial can be made only by the defendant and shall be made before judgment, but where based

upon newly discovered evidence may be made after judgment as well. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In any case the court shall specify in the order the grounds therefor.

b. GROUNDS.

The court may grant a new trial for any or all of the following causes:

(1) When the trial has been held in the absence of the defendant, in cases where such presence is required by law, except as provided in rule twenty-five (25).

(2) When the jury has received any evidence, paper or document out of court not authorized by the court.

(3) When the jury have separated without leave of court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and just consideration of the case.

(4) When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all jurors.

(5) When the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial, or when the prosecuting attorney has been guilty of prejudicial misconduct during the trial thereof before a jury.

(6) When the verdict is contrary to law or evidence.

(7) When the court has refused properly to instruct the jury.

(8) When the defendant has discovered important and material evidence in his or her favor since the verdict, which the defendant could not with reasonable diligence have discovered and produced at the trial. A motion based upon this ground may *shall* be made *promptly and* within two years after final judgment, but such motion may be considered thereafter upon a showing of good cause. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must

produce at the hearing, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all circumstances of the case, may be reasonable.

(9) When from any other cause the defendant has not received a fair and impartial trial.

c. TRIALS WITHOUT JURIES. On a motion for a new trial in an action tried without a jury, the court may where appropriate, in lieu of granting a new trial, vacate the judgment if entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and enter judgment accordingly.

d. EFFECT OF A NEW TRIAL. The granting of a new trial places the parties in the same position as if no trial had been had; all the testimony must be produced anew and the former verdict cannot be used or referred to either in evidence or argument.

e. TIME OF DECISION. A motion for new trial shall be heard and determined by the court within thirty days from the date it is filed, except upon good cause entered in the record.

3. ARREST OF JUDGMENT.

a. MOTION IN ARREST OF JUDGMENT: DEFINITION AND GROUNDS. A motion in arrest of judgment is an application by the defendant that no judgment be rendered on a finding, plea, or verdict of guilty. Such motion shall be granted when upon the whole record no legal judgment can be pronounced.

b. TIME OF MAKING MOTION BY PARTY. The motion must be made before the judgment is pronounced, and shall be filed within six days after finding, plea, or verdict of guilty.

c. ON MOTION OF COURT. The court may also, upon its own observation of any of these grounds, arrest the judgment on its own motion.

d. EFFECT OF ORDER ARRESTING JUDGMENT. The effect of an order arresting judgment is to place the defendant in the

same situation in which he or she was immediately before the indictment was found or the information filed.

e. PROCEEDINGS AFTER ORDER ARRESTING JUDGMENT. If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment or information can be framed, the court may order the defendant to be recommitted to the officer of the proper county, or admitted to bail or otherwise released anew, to answer the new indictment. In such case the order arresting judgment shall not be a bar to another prosecution. But if the evidence upon trial appears to the trial court insufficient to charge the defendant with any offense, the defendant must, if in custody, be released; or, if admitted to bail, his or her bail be exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant.

f. TIME OF DECISION. A motion in arrest of judgment shall be heard and determined by the court within thirty days from the date it is filed, except upon good cause entered in the record.

4. GENERAL PRINCIPLES.

a. EXTENSIONS. The time for filing motions for new trial or in arrest of judgment may be extended to such further time as the court may fix during the six-day period.

b. DISPOSITION. If the defendant moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions.

c. APPEAL. Appeal from an order granting or denying a motion for new trial or in arrest of judgment may be taken by the state or the defendant. Where the court has denied the motion for new trial or in arrest of judgment, or both, appeal may be had only after judgment is pronounced.

d. CUSTODY PENDING APPELLATE DETERMINATION. Pending determination by the supreme court of such appeal, the trial court shall determine whether the defendant shall remain in custody, or whether, if in custody, the defendant should be

released on bail or his or her own recognizance. Where the trial court has arrested judgment and an appeal is taken by the state, and it further appears to the trial court that there is no evidence sufficient to charge the defendant with an offense, the defendant shall not be held in custody.

e. REINSTATEMENT OF VERDICT. In the event the supreme court reverses the order of the trial court arresting judgment or granting a new trial, it shall order that the verdict be reinstated, unless the supreme court finds other errors, in which event it may order that the verdict be set aside and a new trial be granted.

5. CORRECTION OF SENTENCE.

a. TIME WHEN CORRECTION OF SENTENCE MAY BE MADE. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within one hundred twenty days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

b. CREDIT FOR TIME SERVED. The defendant shall receive full credit for time spent in custody under the sentence prior to correction or reduction.

Rule 24. EXECUTION AND STAY THEREOF.

1. MECHANICS OF EXECUTION.

a. COPY OF JUDGMENT. When a judgment of confinement, either in the penitentiary or county jail or other detention facility, is pronounced, an execution, consisting of a certified copy of the entry of judgment must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution.

b. EXECUTION AND RETURN WITHIN COUNTY; CONFINEMENT. A judgment for confinement to be executed in the county where the trial is had shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court.

c. EXECUTIONS OUTSIDE COUNTY; CONFINEMENT.

(1) Under all other judgments for confinement, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be confined in execution of the judgment, and take his or her receipt therefor on a duplicate copy thereof, which the sheriff must forthwith return to the clerk of the court in which the judgment was rendered, with the sheriff's return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued.

(2) When such defendant is discharged from custody, the jailer or warden of the place of confinement shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance.

d. EXECUTION FOR FINE.

(1) Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner.

(2) Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions.

e. EXECUTION IN OTHER CASES. When the judgment is for the abatement or removal of a nuisance, or for anything other than confinement or payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require the sheriff to execute such judgement, and he or she shall return the same, with the sheriff's doings ~~under the same thereon endorsed, to the clerk of the court~~ in which the judgment was rendered, within a time specified by the court but not exceeding seventy days after the date of the certificate of such certified copy.

f. DAYS IN JAIL BEFORE TRIAL CREDITED. The defendant shall receive full credit for time spent in custody on account of the offense for which he or she is convicted.

2. STAY OF EXECUTION.

a. CONFINEMENT. A sentence of confinement shall be stayed if an appeal is taken and the defendant is released pending disposition of appeal pursuant division fourteen (XIV).

b. FINE AND OTHER CASES. The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

c. PROBATION. An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

Rule 25. PRESENCE OF DEFENDANT; REGULATION OF CONDUCT BY THE COURT.

1. FELONY OR MISDEMEANOR. In felony cases 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 this rule. In other cases the defendant may appear by counsel.

2. CONTINUED PRESENCE NOT REQUIRED. In all cases, the progress of the trial or any other proceeding shall not be prevented whenever a defendant, initially present, does one of the following:

a. Voluntarily absents himself or herself after the trial or other proceeding has commenced.

b. Engages in conduct which is such as to justify the defendant being excluded from the courtroom.

3. PRESENCE NOT REQUIRED. A defendant need not be present in the following situations:

a. A corporation may appear by counsel for all purposes.

b. The defendant's presence is not required at a reduction of sentence under rule twenty-three (23).

4. REGULATION OF CONDUCT IN THE COURTROOM.

a. The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting or

televising of judicial proceedings from the courtroom shall not be permitted by the court, except for appropriate noncommercial purposes upon agreement by the prosecutor and the written consent of the defendant.

b. When a defendant engages in conduct seriously disruptive of judicial proceedings, one or more of the following steps may be employed to ensure decorum in the courtroom:

(1) Cite the defendant for contempt.

(2) Take the defendant out of the courtroom until he or she promises to conduct himself or herself properly.

(3) Bind and gag the defendant, thereby keeping the defendant present.

c. When a person who is present in the courtroom is supposed by a magistrate to have upon his or her person a weapon, the magistrate or judge may direct that such person be searched, and any weapon be retained subject to order of the court.

d. The magistrate may cause to have removed from the courtroom any person whose exclusion is necessary to preserve the integrity or order of the proceedings.

Rule 26. RIGHT TO ASSIGNED COUNSEL.

1. REPRESENTATION. Every defendant who is an indigent as defined in section three hundred thirty-six A point four (336A.4) of the Code shall be entitled to have counsel assigned to represent him or her at every stage of the proceedings from the defendant's initial appearance before the magistrate or the court through appeal, including probation and parole revocation hearings, unless the defendant waives such appointment.

2. COMPENSATION. When counsel is assigned to represent an indigent defendant, or to serve as standby counsel as provided in rule eight (8), compensation shall be paid as directed in division fifteen (XV) of this chapter.

Rule 27. DISMISSAL OF PROSECUTIONS; RIGHT TO SPEEDY TRIAL.

1. DISMISSAL GENERALLY: EFFECT. The court, upon its own motion or the application of the county attorney, in the furtherance of justice, may order the dismissal of any pendi

criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a simple or serious misdemeanor; but it is not a bar if the offense charged be a felony or an aggravated misdemeanor.

2. SPEEDY TRIAL. It is the public policy of the state of Iowa that criminal prosecutions be concluded at the earliest possible time consistent with a fair trial to both parties. Applications for dismissals under this subsection may be made by the county attorney or the defendant or by the court on its own motion.

a. When a person is arrested for the commission of a public offense and an indictment is not found against him within forty-five days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives his right thereto.

b. If a defendant indicted for a public offense has not waived his right to a speedy trial he must be brought to trial within ninety days after indictment is found or the court must order the indictment to be dismissed unless good cause to the contrary be shown.

c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment unless an extension is granted by the court, upon a showing of good cause.

d. If the court direct the prosecution to be dismissed, the defendant, if in custody, must be discharged, or his bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to the defendant.

Rule 28. MOTIONS AND OTHER PAPERS.

1. MOTIONS. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought.

It may be supported by affidavit.

2. SERVICE OF MOTIONS AND PAPERS. Service and filing of written motions, notices and other similar papers shall be in the manner provided in civil actions.

Rule 29. RULES OF COURT.

1. DISTRICT COURT PRACTICE RULES. Any rules made by courts governing local practice therein shall be consistent with these rules and applicable statutes.

2. PROCEDURES NOT SPECIFIED THEREIN. If no procedure is specifically prescribed by these rules or by statute, the court may proceed in any lawful manner not inconsistent with same.

Rule 30. FORMS. The forms contained in the appendix of forms are illustrative and not mandatory, and any particular instrument may be in more or less the form illustrated.

Rule 31. TITLE. These rules shall be known as the rules of criminal procedure. (R.Cr.P.)

APPENDIX OF FORMS

(See Rule 30)

FORM 1

SEARCH WARRANT

State of Iowa

County of _____

Criminal Case No. _____

To any peace officer of the state:

Proof having been this day made before me as provided by law that (here, with reasonable certainty and in accordance with the information and other proof obtained by the magistrate, designate the property, its location, the person in possession thereof, and the unlawful use or purpose to which it has been, or is being employed or held) and being satisfied that the foregoing recital relative to said property is probably true, now, therefore, you are commanded to make immediate search of (here state whether the search is of the person of a named person or of said premises, or of another designated thing) and if said property or any part thereof be found, you are commanded to bring said property forthwith before me at my office.