CHAPTER 2
RULES OF CRIMINAL PROCEDURE

INDICTABLE OFFENSES

Rule 2.1 Scope of rules. The rules in this section provide procedures applicable to indictable offenses. Unless the context indicates otherwise, rights or obligations of a defendant's attorney also apply to an unrepresented defendant.

Rule 2.2 Proceedings before the magistrate.

2.2(1) *Definition of "magistrate."* For purposes of this section, "magistrate" includes judicial magistrates, district associate judges, and district judges.

2.2(2) *Initial appearance of the defendant.* An officer making an arrest with or without a warrant shall take the arrested person before a magistrate either personally or by interactive audiovisual system as provided by rule 2.27(1)(*a*) within 24 hours unless no magistrate is available and in all events within 48 hours.

a. When a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith.

b. 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 affidavits filed with the complaint 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 record.

c. Unless otherwise ordered by the court, a pro se defendant may waive the initial appearance by executing and filing rule 2.37—Form 8: *Pro Se Waiver of Initial Appearance and Preliminary Hearing for Indictable Offense*. An attorney for the defendant may waive the initial appearance on the defendant's behalf by executing and filing a written waiver that substantially complies with rule 2.37—Form 9: *Attorney Waiver of Initial Appearance and Preliminary Hearing for Indictable Offense*. The date of the initial appearance is deemed the date the waiver is filed.

2.2(3) *Events to occur at the initial appearance.* The defendant shall not be called upon to plead at the initial appearance. The following events shall occur:

a. The magistrate shall inform the defendant of the complaint and ensure the defendant receives a copy.

b. The magistrate shall inform the defendant of the following:

(1) The defendant's right to retain counsel.

(2) The defendant's right to request the appointment of counsel if the defendant is unable to obtain counsel by reason of indigency.

(3) The circumstances under which the defendant may secure pretrial release.

(4) The defendant's right to obtain review of any conditions imposed on the defendant's release.

(5) That the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant.

(6) The defendant's right to a preliminary hearing unless an indictment or trial information is filed beforehand.

c. If the defendant is found to be indigent pursuant to Iowa Code section 815.9, the magistrate shall appoint counsel to represent the defendant.

d. The magistrate shall order the defendant held to answer in further proceedings.

e. 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 no later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody. Upon a showing of good cause, the time limits specified in this paragraph may be extended by the magistrate. The preliminary hearing will not occur if, prior to its commencement, an indictment or trial information is filed.

2.2(4) *Preliminary hearing.*

a. Waiver of preliminary hearing. Unless otherwise ordered by the court, a pro se defendant may waive the preliminary hearing by executing and filing rule 2.37—Form 8: *Pro Se Waiver of Initial Appearance and Preliminary Hearing for Indictable Offense*. An attorney for the defendant may waive the preliminary hearing on the defendant's behalf by executing and filing a written waiver that substantially complies with rule 2.37—Form 9: *Attorney Waiver of Initial Appearance and Preliminary Hearing for Indictable Offense*.

b. Method of proceeding. The prosecution shall present evidence at the preliminary hearing. The defendant may cross-examine witnesses and may introduce evidence on the defendant's behalf.

c. 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.

d. Constitutional objections. Rules excluding evidence on the ground that it was acquired by unlawful means and motions to suppress are not applicable to the preliminary hearing.

e. Discharge of the 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. Unless the dismissed charge was a serious misdemeanor, the discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same charge.

f. Preliminary hearing testimony preserved by stenographer or electronic recording equipment; production prior to trial. Proceedings at the preliminary hearing shall be reported by a court reporter or recorded by electronic recording equipment and the recording or transcript shall be made available to the defendant, the defendant's attorney, or the government on request. Prepayment for transcripts shall be required except for an indigent defendant.

Rule 2.3 The grand jury.

2.3(1) *Drawing grand jurors.* At such times as prescribed by the chief judge of the district court, the grand jurors shall be drawn using the methods authorized by rule 2.18(2) for random selection of prospective petit jurors. A grand jury shall have seven jurors. If any jurors so drawn are excused by the court or fail to attend on the day designated for their appearance, the clerk shall draw additional names until seven grand jurors are secured.

2.3(2) *Convening the grand jury.* The grand jury shall meet at times specified by order of a district judge, at the request of the prosecuting attorney, or upon the request of a majority of the grand jurors.

2.3(3) *Challenge to the grand jury.*

a. Challenge to the grand jury. The grand jury may be challenged upon any ground set forth in rule 2.18(4). If the challenge is sustained, the court shall take remedial action to select a proper grand jury.

b. Challenge to individual jurors. A challenge to an individual grand juror may be made upon any ground in rule 2.18(5) except for rule 2.18(5)(*g*).

c. Timing of challenges. Challenges to the grand jury or to an individual grand juror must be made and decided, if possible, before the grand jury is sworn.

d. Motion to dismiss. Where the grounds for the challenge could not have been raised earlier, a defendant may raise a challenge to the grand jury or to an individual grand juror by filing a motion to dismiss the indictment.

2.3(4) *Excusing and discharging grand jurors.*

a. 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 fewer than seven, the additional jurors required to fill the panel shall be summoned first from the grand jurors originally summoned who were not previously impaneled. If those jurors have been exhausted, the additional number required shall be drawn from the grand jury list.

b. Discharging jurors. The grand jury shall be discharged by order of the court at the request of the prosecuting attorney. The regular term of a grand jury should not normally exceed one calendar year. However, when an investigation undertaken by the grand jury is incomplete, the court may extend the grand jury's service to the completion of the investigation.

2.3(5) *Duties of grand jury.* The grand jury shall inquire into all indictable offenses brought before it which may be tried within the county, and present them to the court by indictment. The grand jury has the special duty to inquire into:

a. The case of any person imprisoned in the detention facilities of the county on a criminal charge and not indicted.

b. The condition and management of the public prisons, county institutions, and places of detention within the county.

c. The unlawful misconduct in office of public officers and employees in the county.

2.3(6) *Oaths and procedure.*

a. Foreperson. The court shall appoint a foreperson and, if desired, an assistant foreperson from among the grand jurors. When the foreperson or

assistant foreperson already appointed becomes unable to complete their service before the grand jury is finally discharged, a substitute foreperson or assistant foreperson shall be appointed. The foreperson or assistant foreperson of the grand jury shall administer the oath to all witnesses produced and examined before it.

b. Clerks and court reporters. The court may appoint a competent person who is not a member of the grand jury as its clerk. In addition, the court may appoint assistant clerks to the grand jury who are also not members. If the court makes no such appointments, the grand jury shall appoint as its clerk a member who is not its foreperson. The court may appoint a court reporter to record the grand jury proceedings. The court reporter may serve as the clerk of the grand jury.

c. Oaths administered.

(1) The following oath shall be administered to the grand jury: "Do each of you solemnly swear or affirm that you will, to the best of your ability, diligently inquire and make a true presentment or indictment of all public offenses against the people of this state committed or triable within this county; that you will maintain the secrecy of the proceedings now before you; that you will indict no person through malice, hatred, bias, or ill will, nor fail to indict because of fear, favor, affection, or hope of reward; but, rather, that you will base your decision solely upon the evidence before you and in accordance with the laws of this state?"

(2) The following oath shall be administered to any clerk, assistant clerk, court reporter, or court attendant appointed by the court: "Do you solemnly swear or affirm that you will faithfully and impartially perform the duties of your office, that you will not reveal to anyone the grand jury's proceedings or the testimony given before it and you will not express any opinion concerning any question before the grand jury, to the grand jury, or in the presence of the grand jury or any member thereof?"

(3) The foreperson or assistant foreperson shall administer the following oath to all witnesses called to testify: "Do you solemnly swear or affirm, under penalty of perjury, that you will tell the truth, the whole truth, and nothing but the truth and that you will keep secret all that you say, hear, and see while in this grand jury room?"

d. Secrecy of proceedings.

(1) Except where specific provisions require otherwise, grand jury proceedings remain confidential. Every grand juror and any clerk, assistant clerk, court

reporter, or court attendant shall keep secret the proceedings of the grand jury and any testimony given before it. If an indictment is found, no person shall disclose that fact except when necessary for the issuance and execution of a warrant or summons. The duty of nondisclosure shall continue until the indicted person has been arrested.

(2) The prosecuting attorney may appear before the grand jury to give information or examine witnesses, and the grand jury may at all reasonable times ask the advice of the prosecuting attorney or the court.

(3) When the grand jury is deliberating on whether to find an indictment, only members of the grand jury shall be present. The prosecuting attorney, court personnel, and any other persons are barred from the grand jury's deliberations.

(4) No grand juror shall be questioned for anything the grand juror said or any vote the grand juror cast in the grand jury relating to a matter legally pending before it, except in a case of perjury against the grand juror.

(5) The court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer that might be the basis for impeachment proceedings may require the disclosure of a witness's grand jury testimony when necessary in the administration of justice.

e. Securing witnesses and records.

(1) The clerk of court shall issue subpoenas, including subpoenas duces tecum, for witnesses to appear before the grand jury, as requested by the foreperson of the grand jury or the prosecuting attorney.

(2) 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. Reporting. All grand jury proceedings shall be stenographically reported or electronically recorded, except for the deliberations and votes of individual members on whether to find an indictment.

g. Evidence for subject of investigation. The grand jury is not bound to receive evidence from a person who is the subject of investigation, but may do so, and must weigh all the evidence before it. When at least three grand jurors have reason to believe other evidence is available that they wish to have submitted, they may order its submission. If submitted, such evidence shall be considered by the grand jury in deciding whether an indictment should be found.

h. Refusal of witness to testify. When a witness under examination refuses to testify or answer a question, the grand jury shall proceed with the witness before

a district judge, and the foreperson shall repeat the question and the refusal of the witness. If the court finds that the witness is bound to testify or answer the question, the court shall inquire whether the witness persists in refusing and, if the witness does, the court shall proceed with the witness as in cases of similar refusal in open court.

i. Finding an indictment. An indictment should be found when all the evidence, taken together, is such that, if unexplained, would warrant a conviction by the trial jury; otherwise, an indictment shall not be found. An indictment must be based only upon testimony given by witnesses sworn and examined before the grand jury, and other evidence received by the grand jury. A grand jury may consider testimony previously heard by the same or another grand jury. In any case, a grand jury may take additional testimony.

j. 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 foreperson.

k. Effect of refusal to indict. If the grand jury refuses to return an indictment, all materials shall be returned to the clerk, with the foreperson's signed endorsement that the charge has been declined. If the subject of investigation was in custody, the district judge shall enter an order which requires the subject to be released and, if applicable, bond to be exonerated. Upon request of the prosecuting attorney, and for good cause shown, the court may direct that the charge be resubmitted to the same or a subsequent grand jury.

l. Appearance not required. A child under the age of 10 years shall not be required to personally appear before a grand jury to testify against a relative or another person with whom the child resides or has resided during any period of the grand jury's investigation unless the court enters an order finding that the interests of justice require the child's appearance and that the child will not be disproportionately traumatized by the appearance.

Rule 2.4 Indictment.

2.4(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 a public offense.

2.4(2) *Use of indictment.* Offenses other than simple misdemeanors may be prosecuted to final judgment either on indictment or on information as provided in rule 2.5.

2.4(3) *Presentation and filing.* An indictment, when found by the grand jury and properly endorsed, shall be presented to the court. The presentation shall be made by the foreperson of the grand jury in the presence of the other members of the grand jury. The prosecuting attorney shall prepare and present minutes of testimony as provided in rule 2.4(7) by the time of arraignment. The indictment, minutes of testimony, and all exhibits relating thereto shall be filed by the court.

2.4(4) *Contents of indictment.* An indictment shall substantially comply with rule 2.37—Form 5: *General Indictment Form* and, in any event, contain a plain, concise, and definite statement of the offense charged and be signed by the foreperson of the grand jury. 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 of the offense and the statutory provision or provisions alleged to have been violated.

c. A brief statement of the time and place of the offense, if known.

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

2.4(5) *Nonprejudicial defects in indictments.* A trial judgment or other proceeding shall not be affected by any defect in the indictment that does not prejudice a substantial right of the defendant.

2.4(6) *Amendment of indictment.*

a. Generally. The court may, either before or during the trial, order the indictment amended.

b. Opportunity to resist proposed amendment. The defendant shall be given a reasonable opportunity to resist any proposed amendment.

c. When amendment is not allowed. Amendment is not allowed if substantial rights of the defendant are prejudiced by the amendment, or if a wholly new and different offense is charged.

d. Continuance. When an amendment is allowed, no continuance or delay in trial shall be granted on that ground unless the defendant should have additional time to prepare.

2.4(7) *Minutes.*

a. Contents. A minute of testimony shall consist of a notice in writing stating the name and occupation of the witness upon whose testimony the indictment is found, a full and fair statement of the witness's testimony before the grand jury if such witness testified, and a full and fair statement of the witness's expected testimony at trial. Disclosure of witness addresses shall be governed by rule 2.11(13).

b. Amending minutes. The prosecuting attorney may file amended minutes subject to rule 2.19(2).

c. Minutes not to be disseminated. Minutes of testimony shall be available to the district judge, the prosecuting attorney, the defendant, and the defendant's attorney to be used confidentially in the case and shall not be made public or further disseminated.

Rule 2.5 Information.

2.5(1) *In general.*

a. Prosecution on information. All indictable offenses may be prosecuted by a trial information and supporting minutes of testimony. An information charging a person with an indictable offense may be filed at any time, whether or not the grand jury is in session.

b. Submitting the information to the court. Any prosecuting attorney has the authority to submit an information to the court for filing unless that authority is specifically reserved to the attorney general.

2.5(2) *Endorsement.* An information shall be endorsed "a true information" and shall be signed by the prosecuting attorney.

2.5(3) *Witness names and minutes.* The prosecuting attorney shall submit the minutes of testimony with the information. The minutes shall state the name and occupation of each witness upon whose expected testimony the information is based and a full and fair statement of the testimony. Disclosure of witness addresses shall be governed by rule 2.11(13).

2.5(4) *Approval by judge.*

a. A district judge, or a district associate judge having jurisdiction of the offense, shall determine if the minutes supporting the information, if unexplained, would warrant a conviction by the trial jury. If so, the judge shall promptly approve and file the information.

b. If not approved, the charge may be presented to the grand jury for consideration.

c. At any time after judicial approval of an information, and prior to the commencement of trial, the court, on its own motion, may order the information set aside and the charge submitted to the grand jury.

d. If a judge attempts to file an information but the document is returned by the Iowa Judicial Branch electronic document management system, the date and time of the corrected filing shall relate back to the date and time of the judge's attempted filing.

2.5(5) *Indictment rules applicable.* All provisions of these rules applying to prosecutions on indictments apply also to informations, except where otherwise provided by statute or these rules, or when the context requires otherwise. Without limiting the foregoing, rules 2.4(4), 2.4(5), 2.4(6), and 2.4(7) shall apply to trial informations.

2.5(6) *Investigation by prosecuting attorney.*

a. The clerk of court, on written application of the prosecuting attorney and approval of the court, shall issue subpoenas, including subpoenas duces tecum, for such witnesses as the prosecuting attorney may require in investigating an offense.

b. In such subpoenas, the clerk of court shall direct the appearance of said witnesses before the prosecuting attorney at a specified time and place. In lieu of a witness's personal appearance, the subpoena may direct the witness to produce materials at a specified time and place.

c. The prosecuting attorney shall have the authority to administer oaths to said witnesses. The witness shall be subject to the same obligations as if subpoenaed before a grand jury.

d. The application and judicial order for any subpoena shall be maintained by the clerk of court in a confidential file until a charge is filed, in which event disclosure shall be made to the defendant unless the court, in an in camera hearing, orders that the application and order be kept confidential.

Rule 2.6 Multiple offenses or defendants; pleading special matters.

2.6(1) *Multiple offenses.* Two or more offenses that arise from the same transaction or occurrence, or from two or more transactions or occurrences constituting parts of a common scheme or plan, may be alleged and prosecuted as separate counts in a single indictment unless, for good cause shown, the trial

court determines otherwise. Where a charged offense has lesser included offenses, the latter shall not be charged. The defendant may be convicted of either the offense charged or an included offense, but not both.

2.6(2) *Charging multiple defendants.*

a. Multiple defendants. Two or more defendants may be charged in the same indictment 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 two or more defendants are jointly charged, each shall be charged in a separate numbered case with a notation in the indictment of the number or numbers of the other cases. Those defendants shall be tried jointly unless, on motion of a defendant, the court determines that prejudice will result to one of the parties, in which case those defendants shall be tried separately. When jointly tried, defendants shall be adjudged separately on each count.

Comment: Revised rule 2.6(2) is not intended to modify existing law on charging multiple defendants.

2.6(3) *Allegations of prior convictions.* If the defendant will be subject to an increased penalty because of prior convictions, the prior convictions shall be alleged in the indictment. When the indictment is read or presented to the jury, there shall be no mention, directly or indirectly, of the prior convictions before conviction of the current offense.

2.6(4) *Other enhancements.* If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Iowa Code to a greater minimum or maximum sentence because of some fact, such as use of a dangerous weapon, the allegation of such fact shall be contained in the indictment. If the allegation is supported by substantial evidence, the court shall submit to the jury a special interrogatory concerning this matter, as provided in rule 2.22(3).

2.6(5) *Pleading statutes.* A pleading asserting any statute of another state, territory, or jurisdiction of the United States, or a right derived from such statute, must reference the statute with a common citation form. The court may take judicial notice of the statute.

Rule 2.7 Warrants and summonses.

2.7(1) *Issuance.* Upon the request of the prosecuting attorney, the court shall issue a summons or warrant for each defendant named in the indictment who has not previously been held to answer. Where the defendant has previously been held to answer but the indictment has added new charges, the court may upon request of the prosecuting attorney issue a summons or warrant.

2.7(2) *Form.*

a. Warrant. The warrant shall substantially comply with rule 2.36—Form 6: *Arrest Warrant After Indictment or Information* or rule 2.36—Form 7: *Arrest Warrant When Defendant Fails to Appear for Sentencing*, as appropriate. The warrant shall be signed by a magistrate, describe the offense charged in the indictment, and command that the defendant be arrested and brought before the court. The amount of bail or other conditions of release may be fixed by the court and endorsed on the warrant.

b. Summons. The summons shall be in the form prescribed in Iowa Code section 804.2, except that it shall be signed by the clerk of court. A summons to a corporation shall be in the form prescribed in Iowa Code section 807.5.

2.7(3) *Execution; service; return.*

a. Execution or service. The warrant shall be executed or the summons served as provided in Iowa Code chapter 804. With respect to an incarcerated person, the court may enter an order directing that such person be produced for trial. The sheriff shall execute such order by serving a copy thereof on the warden or other individual having authority over 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 of the warrant.

2.7(4) *Forfeiture of bail; warrant of arrest.* If the defendant has been released and does not appear when a personal appearance is necessary, the court may issue a warrant for the defendant's arrest and, if appropriate, order the forfeiture of bail.

Rule 2.8 Arraignment and plea.

2.8(1) *Conduct of arraignment.*

a. Arraignment shall be conducted as soon as practicable following the filing of the indictment. If the defendant appears for arraignment without counsel, the

court must inform the defendant of the right to counsel and ask if the defendant desires counsel. If the defendant desires counsel, and is unable by reason of indigency to employ any, the court must appoint defense counsel.

b. The defendant shall be given a copy of the indictment and the minutes of testimony before being called upon to plead.

c. Arraignment shall consist of reading the indictment to the defendant or, if the defendant waives reading, stating to the defendant the substance of the charge and calling on the defendant to enter a plea.

d. The defendant must inform the court whether the name shown in the indictment is the defendant's true and correct name. If the defendant gives no other name, the defendant is thereafter precluded from objecting to the indictment on the ground of being improperly named.

e. Unless otherwise ordered by the court, the defendant or the defendant's attorney may waive formal arraignment and enter a plea of not guilty by executing and filing a written arraignment that substantially complies with rule 2.37—Form 6: *Written Arraignment and Plea of Not Guilty*. If a written arraignment is used, the date of arraignment is deemed the date the written arraignment is filed.

2.8(2) *Pleas to the indictment.*

a. In general. A defendant may plead guilty, not guilty, or former conviction or acquittal. If the defendant fails or refuses to enter a plea at arraignment, or if the court refuses to accept a guilty plea, the court shall enter a plea of not guilty. A plea of not guilty does not waive any right to challenge the indictment.

b. Pleas of guilty. The court may refuse to accept a guilty plea. The court shall not accept a guilty plea without establishing that the plea is made voluntarily and intelligently and has a factual basis; and addressing the defendant personally in open court and informing the defendant of, and establishing that the defendant understands, the following:

(1) The nature and elements of the offense to which the plea is offered.

(2) The statutory maximum and minimum penalties for the offense to which the plea is offered. For purposes of this rule, penalties include incarceration, fines, surcharges, and any other punitive consequences of the conviction.

(3) That a criminal conviction, deferred judgment, or deferred sentence may result in the defendant not being able to vote, hold public office, or possess firearms or ammunition and may have adverse consequences regarding housing,

employment, federal or state benefits, student loans, and driving privileges, in addition to other consequences.

(4) That a criminal conviction, deferred judgment, or deferred sentence may affect a defendant's status under federal immigration laws. The court shall inform the defendant that if the defendant is not a citizen of the United States, the effects may include deportation, inability to reenter the United States, mandatory detention in immigration custody, ineligibility for release on bond during immigration proceedings, and increased penalties for unauthorized reentry into the United States.

(5) That the defendant has the right to a trial by jury; the defendant is presumed innocent and cannot be convicted unless the state establishes guilt beyond a reasonable doubt to the unanimous agreement of a twelve-person jury; and the defendant has the right to assistance of counsel, the right to confront and cross-examine witnesses, the right not to be compelled to incriminate oneself, and the right to present witnesses and to have compulsory process in securing their attendance.

(6) That by pleading guilty the defendant waives all trial rights and there will not be a trial of any kind.

(7) That if the defendant pleads guilty (and the offense is not a class "A" felony), no appeal may be taken unless there is good cause for the appeal.

(8) The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecuting attorney and the defendant or the defendant's attorney. The terms of any plea agreement shall be disclosed of record as provided in rule 2.10(2). Subject to rule 2.10(3), the court shall inform the defendant that the court is not bound by any party's recommendation as to sentence and that the court will determine sentence at the time of judgment. If the defendant persists in the guilty plea and it is accepted by the court, the defendant shall not have the right to withdraw the plea later on the ground that the court did not follow the plea agreement.

(9) *Conditional Plea.* With the consent of the court and the prosecuting attorney, a defendant may enter a conditional plea of guilty, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

c. Manner and method of plea colloquy. The court shall question the defendant and may allow the defendant's attorney to question the defendant. The prosecuting attorney may suggest questions to be asked of the defendant.

Comment: *Alford* pleas are permitted in the court's discretion, so long as the plea meets the requirements of this rule. *See North Carolina v. Alford*, 400 U.S. 25, 37–38 (1970) (discussing the basis for the *Alford* plea procedure); *State v. Knight*, 701 N.W.2d 83, 89 (Iowa 2005) (noting that "the district court has discretion to accept" *Alford* pleas from defendants).

d. Challenging pleas of guilty. The court shall inform the defendant:

(1) That any challenges to a guilty plea based on alleged defects in the plea proceedings must be raised in a timely motion in arrest of judgment.

(2) Of the time period for filing a motion in arrest of judgment.

(3) That failure to raise such challenges in a motion in arrest of judgment shall preclude the right to assert them.

e. Immediate sentencing. Upon request of the defendant and agreement of the state, the court may proceed directly to judgment and sentencing if the defendant waives all of the following:

(1) The right to file a motion in arrest of judgment.

(2) The use of a presentence investigation.

(3) The allotted time period before entry of judgment.

2.8(3) *Record of proceedings.* A stenographic record of all plea colloquies shall be made.

2.8(4) *Pleas of guilty to serious or aggravated misdemeanors or nonforcible class "D" felonies.* With the court's approval, the defendant may waive personal colloquy in open court in a guilty plea to a serious or aggravated misdemeanor or a nonforcible class "D" felony. In such event, the defendant must sign a written document substantially complying with rule 2.37—Form 12: *Waiver of Rights & Written Guilty Plea for Serious or Aggravated Misdemeanors or Nonforcible Class "D" Felonies* that:

a. Demonstrates the defendant has been informed of and understands the matters set forth in rule 2.8(2)(*b*)(1)–(9).

b. Discloses and acknowledges the terms of any plea agreement, which shall also be acknowledged by the state.

c. Informs the defendant that any challenges to the guilty plea based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to raise such challenges precludes the right to assert them on appeal.

2.8(5) *Withdrawal of guilty plea.* At any time before judgment and upon a showing of good cause and that it is in the interests of justice, the court may permit a guilty plea to be withdrawn and a not guilty plea substituted.

Comment: Revised rule 2.8(5) is not intended to modify existing law as to when a defendant who pleads guilty may withdraw that plea. However, there was a concern that former rule 2.8(2)(*a*) did not reflect current law because it could be read as providing for unfettered trial judge discretion regarding the withdrawal of a guilty plea at any time before judgment.

Rule 2.9 Trial assignments. Within 7 days after the entry of a plea of not guilty, the court shall, by written order, set the date and time for trial. If the defendant waives speedy trial at arraignment, the court may hold a case management conference within 30 days, at which the date and time for trial and deadlines for filing motions and taking depositions will be set.

Rule 2.10 Plea bargaining.

2.10(1) *In general.* The prosecuting attorney and the defendant's attorney may engage in discussions toward reaching a plea agreement, i.e., an agreement that the defendant will plead guilty to one or more offenses in return for one or more concessions by the state.

2.10(2) *Advising the court of agreement.* If a plea agreement has been reached by the parties, the court shall require disclosure of the terms of the agreement on the record at the time the plea is offered. If the plea agreement is in writing, the agreement shall be provided to the court and made a part of the record. All parties shall acknowledge the agreement either in writing or in open court on the record.

2.10(3) *Plea agreements conditioned upon court acceptance.* If the plea agreement is conditioned upon the court's approval of a sentencing agreement between the parties, the court may accept or reject the plea agreement, or may defer its decision to accept or reject the plea agreement until receipt of a presentence investigation report.

a. Acceptance of conditional plea agreement. When the plea agreement is conditioned upon court approval of a sentencing agreement, and the court accepts the sentencing agreement, at or before the time the plea is accepted, the court shall inform the defendant that it will adopt the disposition provided for in the agreement or another disposition more favorable to the defendant.

b. Rejection of conditional plea agreement.

(1) When the plea agreement is conditioned upon court approval of a sentencing agreement, and the court determines it will reject the sentencing agreement, the court shall inform the parties of this fact and afford the defendant an opportunity to withdraw the plea. If the court defers its decision to accept or reject the plea agreement and later decides to reject the plea agreement after receiving the presentence investigation report, the court shall likewise afford the defendant the opportunity to withdraw the plea.

(2) If the court rejects the plea agreement, the court shall also advise the defendant that if the guilty plea continues, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement. If the defendant persists in the guilty plea and it is accepted by the court, the defendant shall not have the right to withdraw the plea later on the ground that the court did not follow the plea agreement.

2.10(4) *Inadmissibility of plea discussions.* If plea discussions do not result in a guilty plea or if a guilty plea is not accepted or is withdrawn, or if judgment on a guilty plea is reversed on direct or collateral review, the content of any plea discussions and any resulting plea agreement, plea, or judgment shall be inadmissible in any proceeding except as provided in Iowa Rule of Evidence 5.410.

Rule 2.11 Pleadings and motions.

2.11(1) *Pleadings and motions.* Pleadings in criminal proceedings shall be the indictment and the pleas entered pursuant to rule 2.8(2). Defenses and objections raised before trial shall be raised by motion.

2.11(2) *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.

2.11(3) *Service and filing of motions, orders, and papers.* Service and filing of written motions, notices, orders, and other similar papers shall be in the manner provided by the Chapter 16 Iowa Rules of Electronic Procedure.

2.11(4) *Pretrial motions.* Any defense, objection, or request that is capable of determination before trial may be raised prior to 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 other than lack of jurisdiction in the court or failure to charge an offense.

c. Motions to suppress illegally obtained evidence pursuant to rule 2.12.

d. Requests for discovery.

e. Requests for a severance of charges or defendants.

f. Motions for change of venue.

g. Motions in limine.

h. Motions for separate interpreters.

i. Objections to enhancements based on prior convictions other than that the defendant was not the person convicted, or that the defendant was not represented and did not waive counsel.

j. Motions for bill of particulars.

Comment: Former rule 2.11(9) authorized a "motion for change of judge" to be "verified on information and belief by the movant." References to the motion of change of judge have been deleted from revised rule 2.11 because they have been superseded by other sources of law relating to recusal and disqualification. *See, e.g.*, Iowa Ct. R. 51:2.11. While a litigant should certainly move for disqualification of a judge when a legal ground for doing so arises, that is not the only way for disqualification to occur.

2.11(5) *Effect of failure to raise defenses or objections.* Failure of the defendant to timely raise defenses or objections or to make requests that must be made prior to trial under this rule shall constitute waiver thereof, but the court, for good cause shown, may grant relief from such waiver.

2.11(6) *Time of filing.* Pretrial motions, except motions for bill of particulars and motions in limine, shall be filed when the grounds therefor reasonably appear but no later than 40 days after arraignment. Motions in limine shall be filed when grounds therefor reasonably appear but no later than 9 days before the trial date. On request of a party, the court may establish different deadlines for filing motions.

2.11(7) *Bill of particulars.* When an indictment or information charges an offense, but fails to specify the particulars of the offense sufficiently to fairly enable the defendant to prepare a defense, the court may, on written motion of

the defendant, require the prosecuting 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 10 days after arraignment unless the time is extended by the court for good cause shown. A plea of not guilty does not waive the right to move for a bill of particulars if such motion is timely filed within this rule. The prosecuting attorney may furnish a bill of particulars on the prosecuting attorney's own motion, or the court may order a bill of particulars without motion. Supplemental bills of particulars may likewise be 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.

2.11(8) *Dismissing indictment or information.*

a. In general. A motion to dismiss the indictment or information may be made on the ground that the matters stated do not constitute the offense charged, that a prosecution for that offense is barred by the statute of limitations, or that the prosecution is barred by some other legal ground. If the court concludes that the motion is meritorious, it shall dismiss the indictment or information unless the prosecuting attorney furnishes an amendment that cures the defect.

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

(1) When the indictment has not been presented and marked "filed" as prescribed.

(2) 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.

(3) 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.

(4) When the grand jury was not selected, impaneled, or sworn as prescribed by law.

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

(1) When the minutes of testimony 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 2.5(4).

2.11(9) *Effect of determination.* If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, it may also order that a defendant continue to be held in custody or that the defendant's bail be continued for a specified period pending the filing of a new indictment, 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 20 days of the dismissal of the original indictment. The 90-day period under rule 2.33(2)(*b*) for bringing a defendant to trial shall commence anew with the filing of the new indictment.

2.11(10) *Ruling on motion.* A pretrial motion shall be determined without unreasonable delay. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

2.11(11) *Motion for change of venue.* If a motion for change of venue is filed and the court finds there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from the county where trial is to be held, the court shall order that the action be transferred to another county in which that condition does not exist.

a. When a motion for change of venue is granted, the prosecution shall continue in the county where the action is transferred. If the defendant is in custody, the court may order the defendant to be delivered to the sheriff of the receiving county.

b. All expenses attendant upon the change of venue and trial, including the costs of keeping the defendant, may be recovered by the receiving county from the transferring county. The prosecuting attorney in the transferring county is responsible for prosecution in the receiving county.

2.11(12) *Defense notices.*

a. Alibi. A defendant who intends to offer evidence of an alibi defense shall file written notice of such intention within the time provided for pretrial motions.

(1) The notice shall specify the place or places at which the defendant claims to have been at the time of the alleged offense and the names of the witnesses upon whom the defendant intends to rely to establish such alibi.

(2) In response, the prosecuting attorney shall, within 10 days of the defendant's notice or within such other time as the court may direct, file written notice of the names of the witnesses the state proposes to offer in rebuttal to the defendant's alibi.

(3) The notice of alibi and any rebuttal notice shall include witness addresses that conform to rules 2.11(13) and 2.13(2).

b. Insanity or diminished responsibility.

(1) *Notice of defense.* If a defendant intends to rely upon either the defense of insanity or the defense of diminished responsibility, the defendant shall file written notice of such intention within the time provided for filing pretrial motions. 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 other orders as appropriate.

(2) *State's right to expert examination.* When a defendant intends to rely on an expert witness or witnesses for the defense of insanity or diminished responsibility, the defendant shall, within the time provided for filing pretrial motions, file written notice of the name of each such witness. Upon the prosecuting attorney's application in response, if a defendant's expert has examined the defendant, the court may order the examination of the defendant by a state-named expert or experts whose names shall be disclosed to the defendant prior to examination.

c. Examination of the defendant for purposes of other defenses. If a defendant's expert has examined the defendant for a reason other than insanity or diminished capacity and is expected to testify, the defendant shall, within the time for filing pretrial motions, file written notice of the name of the expert and the reason for examination. Upon the prosecuting attorney's application in response, the court may order the examination of the defendant by a state-named expert for the same purpose. The name of the state's expert shall be disclosed to the defendant prior to examination.

Comment: Rule 2.11(12)(*c*) is intended to codify the principle set forth in *State v. Rodriguez*, 807 N.W.2d 35, 38-39 (Iowa 2011), including the safeguards described therein.

d. Affirmative defenses. If defendant intends to rely upon an affirmative defense of intoxication, entrapment, justification, necessity, duress, mistake, or prescription drugs, the defendant shall, within the time for filing pretrial motions, file written notice of intention as to each such defense.

e. Failure to comply. If a party fails to abide by the deadlines in this rule, such party may not offer evidence on the issue without leave of court for good cause shown. In granting leave, the court may impose terms and conditions including a delay or continuance of trial. The right of a defendant to give evidence of alibi, insanity, diminished responsibility, or any affirmative defense in the defendant's

own testimony is not limited by this rule. Additionally, this rule does not limit the scope of cross-examination or the defendant's entitlement to an instruction on a defense if supported by the evidence admitted at trial.

2.11(13) *State's duty to disclose witnesses.*

a. Duty to disclose addresses of law enforcement, governmental, and licensed professional witnesses. In the minutes of testimony, the state shall provide the defense with a written list of the known employment addresses of the following persons who are expected to testify in their official or professional capacity during the state's case-in-chief: sworn peace officers; federal, state, local, and municipal employees and elected officials; and licensed professionals.

b. Duty to disclose addresses of other witnesses. In the minutes of testimony, the state shall provide the defense with a written list of the known residential and employment addresses of the other witnesses who are expected to testify during the state's case-in-chief.

c. Grounds for withholding an address. If the state contends disclosure of any address would result in substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy, the state may withhold disclosure and shall inform the defendant's attorney of the basis of the nondisclosure.

d. Disclosure of an address withheld by the state. If the state withholds disclosure of an address, the defendant's attorney may request in writing the disclosure of residential or alternative addresses for investigative purposes or to ensure service of a subpoena.

(1) Within 5 days of receipt of the request, the state shall confer with the defendant's attorney and provide the requested information to the defendant's attorney or seek a protective order from the court. The court may deny, defer, or otherwise restrict disclosure to the defendant's attorney if the state proves the disclosure would result in substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, coercion, or undue invasion of privacy that outweighs any usefulness of the disclosure to the defendant's attorney.

(2) In establishing the usefulness of the disclosure to the defendant's attorney, the defendant's attorney may provide the court with a written statement to be reviewed by the court in camera. The written statement shall not be served on the state, but shall be made a part of the file, placed under seal, and not subject to disclosure absent further order of the court.

(3) If the court denies the defendant's attorney's request, the court may enter an order allowing the defendant's attorney an opportunity to meet with any witness who is willing to talk to the defendant in an environment that provides for the protection of the witness. The court shall also enter an order facilitating the defendant's attorney's ability to serve a subpoena on the witness for deposition or trial.

e. Further disclosure of addresses by the defendant's attorney. Any address disclosed by the state in the minutes of testimony may be disclosed by the defendant's attorney to the defendant, persons employed by the attorney, persons appointed by the court to assist in the preparation of a defendant's case, or any other person if the disclosure is required for preparation of the defendant's case. An attorney shall inform persons provided this information that further dissemination of the information, except as provided by court order, is prohibited. A willful violation of this rule by the defendant, an attorney, persons employed by an attorney, persons appointed by the court, or other persons authorized by the court to receive the address is subject to punishment by contempt.

f. Continuing duty to update. The state has a continuing duty to inform the opposing party of any change in the last known residential address or employment address of any witness that the state intends to call during its case-in-chief as soon as practicable after the state obtains that information.

g. Interference with witnesses. The defendant, attorneys representing the defendant or the state, and their representatives and agents shall not instruct or advise persons, except the defendant, having relevant information that they should refrain from discussing the case with the opposing party's attorney or an unrepresented defendant or from showing the opposing party's attorney or an unrepresented defendant any relevant evidence. The defendant, attorneys representing the defendant or the state, and their representatives and agents shall not otherwise impede investigation of the case by the opposing party's attorney or an unrepresented defendant. *See* Iowa R. Prof'l Conduct 32:3.4(a), (f).

h. Service of subpoenas. The most recent address provided by the state for a witness shall be the authorized address where the witness can be served, except when the defendant's attorney has reason to believe that the address is not accurate for that witness at the time of service, or the person in fact no longer works or resides at that address.

Rule 2.12 Suppression of unlawfully obtained evidence.

2.12(1) *Motion to suppress evidence.* A person aggrieved by an unlawful search, seizure, interrogation, or other unlawfully obtained evidence may move to suppress for use as evidence anything so obtained. The court shall receive evidence on any issue of fact necessary to the decision of the motion. The motion shall be made as provided in rules 2.11(4)–(6).

2.12(2) *Discretionary review of an interlocutory order.* Any party aggrieved by an interlocutory order affecting the suppression of evidence, except in simple misdemeanors, may apply for discretionary review of the order in advance of trial.

2.12(3) *Effect of failure to file.* Failure to file a timely motion to suppress evidence waives the objection that the evidence was unlawfully obtained unless good cause is shown for a later filing.

Rule 2.13 Depositions.

2.13(1) *By defendant.*

a. A defendant in a criminal case may depose all witnesses listed by the state in the minutes of testimony in the same manner, with the same effect, and with the same limitations, as in civil actions except as otherwise provided by statute and these rules.

b. Before indictment, depositions may be taken only with leave of court.

2.13(2) *Reciprocal disclosure of witnesses.*

a. At or before the taking of any deposition by a defendant, the defendant shall file a written list of the names and addresses of all witnesses expected to be called for the defense except the defendant and surrebuttal witnesses.

b. The defendant shall have a continuing duty before and throughout trial promptly to disclose additional defense witnesses.

c. If the defendant has taken depositions and does not disclose to the prosecuting attorney all of the defense witnesses, except the defendant and surrebuttal witnesses, at least 9 days before trial, the court may order the defendant to permit the discovery of such witnesses, grant a continuance, or enter such other order as it deems just under the circumstances. The court may, if it finds that no less severe remedy is adequate to protect the state from undue prejudice, order the exclusion of the testimony of any such witnesses.

d. The state may depose any witness listed by the defense.

2.13(3) *Objections to depositions.* If either party objects to the taking of a deposition, the court shall determine whether discovery of the witness is necessary in the interest of justice and shall allow or disallow the deposition.

Comment: The former rule recognized only two objections to depositions: (1) that the witness was a foundation witness, and (2) that the witness had been adequately examined at the preliminary hearing. The revised rule recognizes there may be other legally valid objections to a deposition, e.g., the witness has already been deposed and there is no need for a second deposition.

2.13(4) *Time of taking.* If the defendant does not waive speedy trial, depositions shall be taken within 30 days after arraignment unless the deadline is extended by the court. If the defendant waives speedy trial, depositions shall be taken at least 30 days before trial unless the court orders otherwise.

2.13(5) *Presence of defendant.* Subject to rule 2.27(1)(*c*), the defendant is required to be personally present at all depositions. If the identity of the defendant is at issue and the defendant makes a timely motion, the court may allow the defendant to be absent during the part of the deposition when the parties question an eyewitness concerning the identity of the perpetrator of the crime. In that event, all parties shall complete their examination of the eyewitness regarding identity before the defendant is required to be present.

2.13(6) *Special circumstances.*

a. Perpetuation of testimony where a witness will be unavailable at trial. Whenever the interests of justice make necessary the taking of the deposition of a prospective witness for use at trial, the court may, upon motion of a party and notice to the other parties, order that the deposition be taken and that any designated materials, not privileged, be produced at the same time and place. This provision is available even if the moving party is the only party intending to call the prospective witness at trial.

b. Continuation of the prosecuting attorney's investigation. After a complaint or indictment has been filed, the prosecuting attorney may continue to subpoena witnesses and utilize subpoenas duces tecum, as provided in rule 2.5(6). However, the defendant shall receive notice, and if a witness appears pursuant to a subpoena, the defendant shall have the opportunity to appear, cross-examine the witness, and review materials produced by the witness.

2.13(7) *Perpetuating testimony.* A person expecting to be a party to a criminal prosecution may perpetuate testimony in the person's favor in the same manner

and with like effect as may be done in expectation of a civil action. *See* Iowa Rs. Civ. P. 1.721–1.728.

Rule 2.14 Discovery.

2.14(1) *Disclosure of evidence by the state upon defense request or motion.*

a. Disclosure required upon request.

(1) Upon a filed pretrial request by the defendant, the prosecuting attorney shall permit the defendant to inspect and copy:

1. Any relevant written or recorded statements made by the defendant, within the possession, custody, or control of the prosecuting attorney or investigating law enforcement agency unless those statements were included with the minutes of testimony accompanying the indictment.

2. The substance of any oral statement made by the defendant, which the state intends to offer in evidence at the trial, including any record of same.

3. The transcript or record of testimony of the defendant before a grand jury.

(2) When two or more defendants are jointly charged, upon the filed request of any defendant, the prosecuting attorney shall permit the defendant to inspect and copy any written or recorded statements and the substance of any oral statements of a codefendant that the state intends to offer in evidence at trial.

(3) Upon the filed request of the defendant, the state shall permit the defendant to inspect a copy of the defendant's prior criminal record, if any.

b. Discretionary discovery.

Upon motion of the defendant, the court may order the prosecuting attorney to permit the defendant to inspect, copy, and photograph, and, where appropriate, subject to scientific tests:

(1) Items seized by the state in connection with the alleged crime.

(2) Any results or reports of physical or mental examinations and scientific tests or experiments made in connection with the particular case, within the possession, custody, or control of the state.

(3) Writings, recordings, photographs, or tangible objects within the possession, custody, or control of the prosecuting attorney or investigating law enforcement agency, which are material to the preparation of the defense, or are intended for use by the state as evidence at the trial, or were obtained from or belong to the defendant. This includes the transcript or record of any grand jury testimony given by a witness who is expected to testify in the government's case-in-chief.

2.14(2) *Disclosure of evidence by the defendant.*

If the court grants the relief sought by the defendant under rule 2.14(1)(*b*), the defendant shall have a duty to permit the state to inspect and copy:

a. Writings, recordings, photographs, or tangible objects, including statements other than those of the defendant that 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. Any results or reports of physical or mental examinations and scientific tests or experiments made in connection with the particular case, within the possession or control of the defendant, 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 the witness's testimony.

2.14(3) *Continuing duty to disclose.* If following the issuance of an order under this rule, a party discovers additional evidence or decides to use additional evidence that would be subject to discovery under the same order, the party shall promptly disclose the evidence to the other party.

2.14(4) *Regulation of discovery.*

a. Protective orders. For good cause shown, the court may order the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate.

b. Failure to comply. If a party fails 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, prohibit the party from introducing any evidence not disclosed, or enter such other order as it deems just under the circumstances.

Rule 2.15 Subpoenas.

2.15(1) *For witnesses.* The clerk of court in any pending criminal action shall issue deposition or trial subpoenas for witnesses, signed by the clerk and with the seal of the court, and make them available to the defendant's attorney or the prosecuting attorney.

2.15(2) *For production of documents.* A subpoena may direct the witness to bring with the witness any documents, electronically stored information, or other things under the witness's control that the witness is bound by law to produce

as evidence. The court on motion may dismiss or modify the subpoena if compliance would be unreasonable or oppressive.

2.15(3) *Special circumstances.*

a. Defense Subpoenas.

(1) After an indictment or trial information is filed, the defendant may apply to the court, with notice to the state, to issue a subpoena for the purposes of investigation. The application must include a list of all other reasonable efforts made by the defendant to obtain the material sought and must establish in detail and in good faith all of the following:

1. The material sought contains exculpatory information.

2. The material sought does not include private information concerning a crime victim in the case.

3. The material sought is not otherwise protected from disclosure by a separate rule of criminal procedure, rule of evidence, or federal or state statute.

4. The information is not available from any other source.

(2) If the court concludes that the defendant's application does not meet the requirements of rule 2.15(3)(*a*)(1), the court shall return or reject the defendant's application and deny any hearing.

(3) If the court concludes that the defendant's application has made the showing required by rule 2.15(3)(*a*)(1) by a preponderance of the evidence, it shall order the defendant to notify any person or entity affected by the defendant's application. Any objections, motions to quash or modify the subpoena, or motions for protective orders by the state or nonparties must be filed with the court within 14 days of receiving the notice from the defendant and must include the basis for the objection or motion and may include a request for a hearing.

(4) The court may limit the scope of any subpoena issued under rule 2.15(3) and enter any protective order as necessary in the interests of justice, including a requirement of in camera review of the materials obtained before disclosure to the parties.

(5) The defendant is responsible for service of any subpoenas permitted by the court under rule 2.15(3) and service must be made pursuant to rule 2.15(4). The defendant is responsible for any costs associated with the production of the requested materials.

(6) The defendant must produce any materials obtained by a subpoena issued under rule 2.15(3) to the state and any codefendants within 7 days of receipt of the materials or at least 10 days prior to trial, whichever is earlier.

(7) Rule 2.15(3)(*a*) is the exclusive procedure by which a criminal defendant may subpoena documents or other evidence before trial, except that a request for documents may be included with a rule 2.15(1) trial subpoena or a rule 2.15(2) deposition notice. Failure to comply with this rule may result in sanctions from the court, such as contempt or a finding that the evidence obtained is inadmissible at trial.

b. Preservation order. The defendant may seek a preservation order to avoid the risk of loss of evidence or other reason justifying relief by filing an emergency application with the court along with any supporting affidavits and a proposed order. Notice shall be given to the state when making this application. If the court finds good cause has been shown by the application and any supporting affidavits, the court shall immediately issue a preservation order to be served on the appropriate person or entity.

2.15(4) *Service.* Any person who is at least 18 years old and not a party to the case may serve a subpoena.

Comment: Investigators, paralegals, and attorneys may serve subpoenas unless they are a party to the case.

a. A peace officer must serve without delay in the peace officer's county or city any subpoena delivered to the peace officer for service and make a written return stating the time, place, and manner of service.

b. When service is made by a person other than a peace officer, proof thereof shall be made by affidavit, which shall be filed in the court and shall include the time, place, and manner of service and the name of the person served.

c. Service upon an adult witness is made by personally delivering a copy of the subpoena to the witness.

d. Service may be by electronic mail or other electronic means with the consent of the person or entity being served. Proof of service shall be filed with the court.

e. Service upon a minor witness shall be as provided for personal service of an original notice in a civil case pursuant to Iowa Rule of Civil Procedure 1.305(2).

f. Any subpoena must comply with Iowa Code section 622.10, if applicable.

2.15(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 as contempt. The attendance of a witness who so fails to appear may be compelled by warrant.

Rule 2.16 Pretrial conference.

2.16(1) *When held.* The court may order all parties to appear for a conference to consider such matters as will promote a fair and expeditious trial.

2.16(2) *Subjects of the conference.* The conference may cover such matters as amendment of pleadings, agreements as to the introduction of evidence, submission of requested jury instructions, and any other matters that may facilitate trial.

2.16(3) *Stipulations and orders.* The court shall enter an order reciting any action taken at the conference.

2.16(4) *Orders on written agreement.* Nothing in this rule shall prevent the court from entering orders without a hearing on written stipulation of the parties.

Rule 2.17 Trial by jury or court.

2.17(1) *Trial by jury.* Cases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in open court and on the record. Any waiver of a jury trial must occur at least 10 days prior to trial unless the prosecuting attorney consents. The defendant may not withdraw waiver of a jury trial without court approval.

2.17(2) *Trial on the minutes.*

a. Generally. In a case where the parties agree to a trial on the minutes of testimony, the court shall render a verdict without a jury based on the previously filed minutes and any other material that the parties have agreed should be included in the trial record.

b. Jury waiver required. Before commencing a trial on the minutes, the court shall personally address the defendant and ensure the defendant has duly waived the right to a jury trial in open court and on the record.

c. Additional colloquy required. The court shall further address the defendant personally and in open court and inform the defendant of the following:

(1) That the determination of guilt or innocence will be based only upon the minutes of testimony filed by the state and any other materials the parties have agreed to be included.

(2) That the defendant will not have the right to call any witnesses on the defendant's behalf including the defendant.

(3) That the defendant is giving up the right to cross-examine the state's witnesses and to object to any evidence set forth in the minutes or any other materials the parties have agreed to be included.

d. Excluding information from a trial on the minutes. The parties may also agree to exclude portions of the minutes from consideration at trial, in which case the colloquy in rule 2.17(2)(*c*) will be adjusted accordingly.

2.17(3) *Findings.* In a case tried without a jury, the court shall find the facts specially, separately state its conclusions of law, and render an appropriate verdict in open court and on the record. The defendant may waive in advance the right to receive the verdict in open court.

Rule 2.18 Juries.

2.18(1) *Definitions.* The following terms, as used in this rule, are defined as follows:

a. Panel. Those jurors drawn or assigned for service to a courtroom, judge, or trial.

b. Pool. The sum total of prospective jurors reporting for service.

2.18(2) *Selection of the panel.* For each jury trial, the clerk of court shall randomly select a number of prospective jurors equal to twelve plus the prescribed number of alternates and strikes. The clerk may randomly select additional prospective jurors for the panel to allow for possible challenges for cause.

2.18(3) *Depletion of the panel.* If for any reason the panel is exhausted without a jury being selected, the panel shall be replenished from the pool or, if necessary, in the manner provided in Iowa Code chapter 607A.

2.18(4) *Challenges to the panel or the pool.* Before any juror is sworn for examination, either party may challenge the panel or the pool on the record distinctly specifying the grounds, which can be founded only on a material departure from the legal requirements for selecting the jury. Any officer, judicial or ministerial, whose irregularity is complained of, and any other persons, may be examined concerning the facts specified. If the court sustains the challenge, it shall discharge the panel or the pool, as appropriate.

2.18(5) *Challenges to individual jurors for cause.* A challenge for cause of an individual juror may be made orally by the state or the defendant and must

distinctly specify the facts constituting the cause. A challenge may be made on an individual juror for any of the following causes:

a. A previous conviction of the juror of a felony unless it can be established through the juror's testimony or otherwise that the juror's rights of citizenship have been restored.

b. Failure to meet any of the qualifications prescribed by Iowa Code chapter 607A to render a person a competent juror.

c. A physical or mental condition that would reasonably render the juror incapable of performing the duties of a juror.

d. Affinity or consanguinity, within the fourth degree, to an alleged victim, complaining witness, or defendant.

e. Standing in the relation of guardian and ward, attorney and client, employer and employee, or landlord and tenant with an alleged victim, complaining witness, or defendant.

f. Having been adverse to the defendant in a prior civil action or criminal prosecution.

g. Having served on a grand jury that heard evidence of the case.

h. Having served on a trial jury that heard evidence of the case in a trial of another defendant.

i. Having been on a jury previously sworn to try the same indictment.

j. Having served as a juror in a civil action that heard evidence of the case.

k. Having 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 on the trial.

l. Having provided bail for any defendant in the indictment.

m. Having been a defendant in a similar indictment or the victim of a similar offense within the preceding year.

n. Having been a witness either for or against the defendant at the preliminary hearing or before the grand jury.

o. Where the circumstances indicate the juror would have an actual bias for or against a party.

2.18(6) *Examination of jurors.* Before examination, the jurors shall be sworn. On sensitive subjects, the court may order that jurors be examined individually, separate from each other and in a location other than the courtroom. 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 answers cannot be used in a civil or criminal proceeding against the juror, other than a prosecution for perjury or contempt. When a potential juror expresses actual bias relevant to the case, including but not limited to bias based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, the court may clarify the juror's position but shall not attempt to rehabilitate the juror by its own questioning.

2.18(7) *Order of challenges for cause.* The state shall first complete its challenges for cause, followed by the defendant, until a number of jurors equal to twelve plus the prescribed number of strikes has been obtained.

2.18(8) *Vacancy filled.* If a challenge for cause is sustained, another juror shall be called and examined. Any new juror thus called may be challenged for cause and shall be subject to being struck from the list as other jurors.

2.18(9) *Clerk to prepare list; procedure.* The clerk of court shall prepare a list of jurors called. After challenges for cause are completed, each side, commencing with the state, shall alternately exercise its strikes by indicating the strike upon the list opposite the name of the juror.

2.18(10) *Number of strikes.*

a. Class "A" felonies. If the offense charged is a class "A" felony, the state and defendant shall each strike ten prospective jurors.

b. Other felonies. If the offense charged is a felony other than a class "A" felony, the state and the defendant shall each strike six prospective jurors.

c. Misdemeanors. If the offense charged is a misdemeanor, the state and the defendant shall each strike four prospective jurors.

2.18(11) *Preserving appellate review of certain denials of challenges for cause.*

a. To preserve for appellate review a claim that a challenge for cause was improperly denied when the party later exercised a strike on the same juror, a party must do the following outside the presence of the jury before the jury is impaneled:

(1) The party must identify a seated juror whom the party would have stricken if an additional strike had been available and state the reasons why the juror would have been stricken.

(2) The party must request an additional strike to be used on that juror.

b. If the court grants the additional strike, then another juror shall be called and examined as needed.

Comment: Rule 2.18(11) is intended to codify the procedure set forth in *State v. Jonas*, 904 N.W.2d 566 (Iowa 2017).

2.18(12) *Multiple charges.* If the indictment charges multiple offenses, the number of strikes shall be based on the highest grade of offense charged.

2.18(13) *Multiple defendants.* Where two or more defendants are tried together, each defendant shall have one-half the number of strikes allowed in rule 2.18(10). The state shall have the number of strikes equal to the total number of strikes allotted to all defendants. Subject to the court's approval, the parties may agree to a reduced number of strikes.

2.18(14) *Selecting alternate jurors.* The court may require selection of one or more alternate jurors whose qualifications will be the same as principal jurors.

a. The role of alternate jurors. An alternate juror shall replace a principal juror if, during trial, a principal juror becomes unable to serve.

b. Alternate juror selection procedure. Prior to commencing jury selection, the court must determine, on the record, with input of the attorneys, how many alternate jurors will be selected and how they will be selected, provided that any method of selection must comply with this rule. The clerk of court will call for examination the number of additional prospective jurors necessary to allow for the number of alternates to be selected and one additional strike for each party.

c. Examination and seating of alternate jurors. Jury examination will proceed contemporaneously for both principal and alternate jurors.

d. Identity of alternate jurors. The identity of the alternate jurors will not be revealed to the jury or the alternates until the jury retires to deliberate.

e. Excusing alternate jurors. Once the jury commences deliberations, any remaining alternate jurors shall be excused from further service and not recalled.

2.18(15) *Reading of names or numbers.* After all challenges have thus been exercised or waived and the required number of jurors has been struck from the list, the court shall read the names or assigned numbers of the jurors remaining, including any alternates, who shall constitute the jury selected.

2.18(16) *Jurors sworn.* Once the jurors are selected, they shall be sworn to try the issues.

Rule 2.19 Trial.

2.19(1) *Order of trial and arguments.*

After the jury has been impaneled and sworn, the trial shall proceed in the following order:

a. The prosecuting attorney must read the accusation from the indictment and state the defendant's plea to the jury. The level of offense shall not be read.

b. The prosecuting attorney may summarize the evidence expected to sustain the indictment.

c. The defendant's attorney may summarize the expected evidence, waive the making of such statement, or reserve the right to make such statement immediately prior to the presentation of the defendant's evidence.

d. The prosecuting attorney shall offer evidence in support of the indictment.

e. The defendant's attorney may offer evidence in support of the defense.

f. Either party may offer rebutting evidence.

g. After the completion of evidence, the prosecuting attorney may offer a closing argument, the defendant's attorney may offer a closing argument, and the prosecution may offer a rebuttal.

Comment: Former rule 2.19(1)(*b*) provided that "[l]ength of argument and the number of counsel arguing shall be as limited by the court." There is no intent to change this law; however, the drafters of the revised rule did not want to imply that the court lacked authority to limit segments of the trial other than the closing argument.

2.19(2) *Advance notice of evidence supporting indictment.*

a. The prosecuting attorney shall not be permitted to introduce any witness whose minutes of testimony were not filed at least 10 days before the commencement of trial, except rebuttal witnesses.

b. If the prosecuting attorney does not provide the requisite notice, the court may order the state to permit the discovery of such witness, grant a continuance, or enter such other order as it deems just under the circumstances. If the court finds that no less severe remedy is adequate to protect the defendant from undue prejudice, the court may order the exclusion of the testimony of any such witness.

2.19(3) *Reporting of trial.* Reporting of the trial shall be governed by Iowa Rule of Civil Procedure 1.903. However, reporting may not be waived except for voir dire in misdemeanor cases.

2.19(4) *The jury during trial.*

a. Motion for a view. Upon motion of either party, the court may allow the jury to view a location material to the case. The jury shall be accompanied by a person designated by the court and transported by proper officers. Any person accompanying the jury shall be sworn to protect the integrity of the proceedings and shall not allow communications to occur on any subject connected with the trial.

b. Juror may not be witness. A juror may not testify as a witness in the trial of the case in which the juror is sitting.

c. Sequestration of jurors. For good cause shown, the court may sequester the jury during trial in a manner prescribed by the court.

d. Admonition to jurors.

(1) After the jury is impaneled, the court shall admonish the jurors:

1. Not to speak or communicate with any person and not to permit any person to speak to or communicate with them regarding any subject related to the case. This prohibition includes all forms of communication, including social media.

2. To report immediately to the court any attempt by anyone to communicate with them in any way concerning the case.

3. Not to converse among themselves or form or express an opinion on any aspect of the case until the case is finally submitted.

4. Not to visit any place involved in the case, including the scene of the alleged offense.

5. Not to view, read, or listen to any accounts of the case or trial, whether on traditional media or social media.

6. Not to do any searches, research, experiments, or tests relating to anything connected with the case or trial. This includes internet research and accessing social media.

(2) At adjournments, the court shall restate or remind the jury of the admonition.

e. Notes taken by jurors during trial. Notes may be taken by jurors during the testimony of witnesses. At the completion of the jury's deliberations, the court shall destroy any notes taken during the trial.

f. Exhibits during deliberations. Upon retiring for deliberations, the jury shall be given the exhibits received in evidence and the court's instructions. Redactions should be made before exhibits are received in evidence. The jury shall not be given depositions. The court may also withhold from the jury original

exhibits whose presence in the jury room could present an issue of safety, security, or risk of loss.

g. Instructions. The rules relating to the instruction of juries in civil cases apply to criminal cases.

h. Duty of the court to instruct on lesser included offenses. The trial court shall instruct the jury as to any offense charged and any lesser included offense supported by the evidence. The defendant may, with the consent of the state, waive the submission to the jury of any lesser included offense. Such waiver shall be made on the record.

i. Jury deliberations. On final submission, the jury shall retire for deliberation and be kept together under an officer's charge until the jurors agree on a verdict or are discharged by the court. Unless the jury is sequestered, the court may permit the jurors to separate temporarily overnight, on weekends, on holidays, and in emergencies.

j. Duties of the officer in charge during deliberations. The officer in charge must be sworn to:

(1) Not allow any communication to or from the jury during deliberations.

(2) Not personally make any communication to the jurors without court order, except to ask if they have agreed on a verdict.

(3) Not communicate to any person the state of the jury's deliberations or the verdict agreed upon before it is rendered.

k. Juror inquiries. After the jury has retired for deliberation, if any member of the jury has a question as to any part of the evidence or relevant point of law, the question must be made in writing and delivered to the judicial assistant by a juror, who shall then deliver it promptly to the presiding judge. The court, after consultation with the parties outside the presence of the jury, shall determine the response to be provided. Any response shall be provided in writing. A record shall be made of the question and the response.

2.19(5) *Mistrial.*

a. Discharge for mistrial.

(1) The court may declare a mistrial and discharge a jury for the following reasons:

1. Because of any accident or calamity requiring termination of the trial upon motion of a party for cause shown.

2. When a required continuance would make it impractical to proceed with the same jury.

3. When the jurors have deliberated until it satisfactorily appears that they cannot agree.

4. Because of an error resulting in the denial of a fair trial.

(2) If the court declares a mistrial, the case shall be retried within 90 days unless double jeopardy bars further prosecution, the defendant waives speedy trial, or good cause for further delay is shown.

b. Lack of territorial jurisdiction. If the court determines it lacks territorial jurisdiction of the offense, the court shall dismiss the indictment and discharge the jury. The court shall either order the immediate release of the defendant or order the defendant's retention in custody for a reasonable time to allow the prosecuting attorney to inform the relevant authorities in the appropriate jurisdiction and to permit that jurisdiction to take custody of the defendant.

2.19(6) *The trial judge.*

a. Unavailability of the trial judge. If the judge before whom trial has commenced is unable to continue presiding over any stage of the case, including sentencing, another judge may complete the proceedings. If such other judge cannot in fairness complete the proceedings due to not having previously presided, that judge may grant a new trial.

b. Adjournments declared by the trial court. While the jury is absent, the court may adjourn for other business, but it shall be available for every purpose connected with the case submitted to the jury until a verdict is rendered or the jury is discharged.

2.19(7) *Motion for judgment of acquittal.*

a. Motion before submission to the jury. At the close of evidence on either side, if the evidence is insufficient to sustain a conviction of an offense, the court on motion of a defendant or on its own motion shall enter a judgment of acquittal on that offense.

b. No need to renew motion. If a defendant's motion for judgment of acquittal at the close of the state's case is not granted, the defendant may offer evidence without having to renew the motion at the close of evidence.

c. Reservation of decision on motion. If a motion for judgment of acquittal is made at the close of all evidence, the court may either decide the motion at that time or reserve decision on the motion and submit the case to the jury. In the latter case, the court shall decide the motion after the jury returns a verdict or is discharged without having returned a verdict.

2.19(8) *Trial of questions involving prior convictions.* After conviction of the current offense, but prior to pronouncement of sentence, if the indictment alleges one or more prior convictions that subject the defendant to an increased sentence, the defendant shall have the opportunity in open court to affirm or deny that the defendant is the person previously convicted, or that the defendant was not represented by counsel and did not waive counsel when previously convicted.

a. Prior to accepting any affirmation by the defendant, the court shall determine that a factual basis exists for the affirmation and shall have a colloquy with the defendant to ensure any admission is knowing and voluntary consistent with rule 2.8(2). The court shall inform the defendant:

(1) Of the nature and elements of the enhancement.

(2) That the prior convictions must have been obtained when the defendant was represented by, or waived the right to, counsel.

(3) Of the maximum and minimum possible punishment resulting from the enhancement.

(4) That by affirming that the defendant is the person previously convicted, the defendant waives the right to a trial by jury, the right to the assistance of counsel, the right to confront and cross-examine witnesses, and the right against self-incrimination.

(5) That the defendant's affirmation means no trial will be held on whether the defendant is the person previously convicted.

(6) That the state is not required to prove the prior convictions were entered with counsel if the defendant does not first raise the claim.

(7) That any challenges to the increased sentence resulting from the prior convictions must be raised in a timely motion in arrest of judgment and failure to raise such challenges shall preclude the right to assert them on appeal.

b. If the defendant denies being the person previously convicted, sentence shall be postponed for such time as to permit a trial before a jury on the issue of the defendant's identity with the person previously convicted. Other objections shall be heard and determined by the court.

c. On the issue of identity, the court may reconvene the jury that heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled.

Rule 2.20 Witnesses.

2.20(1) *The defendant.* A defendant in a criminal action or proceeding shall be a competent witness in the defendant's own behalf but cannot be called by the state.

Comment: No substantive changes are intended from former rule 2.20(1).

2.20(2) *Compelling attendance of out-of-state witnesses.* The presence and testimony of a witness located outside the state may be secured as provided by Iowa Code chapter 819.

2.20(3) *Immunity.*

a. Waiver required. Before any witness shall be compelled to answer or to produce evidence in any judicial proceeding after having asserted in good faith that such answer or evidence would violate the witness's privilege against self-incrimination, the witness must knowingly waive the right unless granted immunity.

b. Application for immunity. If a witness refuses to testify or produce documents or evidence the county attorney or attorney general may file a verified application for immunity setting forth that:

(1) The testimony of the witness or the production of documents or other evidence in the possession of such witness is necessary and material.

(2) The witness has refused to testify, or to produce documents or other evidence upon the ground that such testimony or evidence would tend to incriminate the witness.

(3) 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.

c. Reporting required. 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.

d. Ruling on application. Following receipt of a proper application, the court shall enter an order granting the witness immunity from prosecution for any offense concerning which the witness is compelled to give testimony or provide evidence and based on the use, direct or indirect, of any testimony or evidence the witness is compelled to give.

e. Effect of immunity. Testimony or evidence that a witness granted immunity has given shall not be used against the witness in any trial or proceeding, or subject the witness to any penalty or forfeiture, except a charge of perjury or

contempt of court committed in the course of or during the giving of such testimony. In addition, the witness shall not be prosecuted for any offense concerning which the witness was compelled to give testimony or provide evidence.

Comment: The changes to this part of rule 2.20 are intended to make clear that the rule follows the holding of *Allen v. Iowa District Court*, 582 N.W.2d 506 (Iowa 1998), with respect to the scope of immunity—i.e., the immunity is both transactional and use immunity.

f. Filing of application and other materials. The application, transcripts, and orders required by this rule shall be filed as a separate case in the criminal docket entitled "In the matter of the testimony of (Name of witness)." A transcript of testimony given pursuant to an order of immunity shall be made at state expense and filed in this docket. The application, order granting immunity, and all transcripts filed shall be sealed upon motion of the witness, the defendant, or the prosecuting attorney and shall be opened only by order of the court.

g. Refusal to testify after immunity granted. Whoever shall refuse to testify or to produce evidence after having been granted immunity shall be subject to punishment for contempt of court as in the case of any witness who refuses to testify.

2.20(4) *Witnesses for indigents.* An attorney for a defendant who because of indigency is financially unable to obtain expert or other witnesses necessary to an adequate defense of the case may request in a written application that the necessary witnesses be secured at state expense. Upon finding that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize the defendant's attorney to obtain the witnesses on behalf of the defendant. The court shall determine reasonable compensation and direct payment pursuant to Iowa Code chapter 815.

Rule 2.21 Evidence.

2.21(1) *Rules.* Chapter 5 Iowa Rules of Evidence apply to criminal proceedings.

2.21(2) *Questions of law and fact.* In a jury trial of a criminal case, questions of law are decided by the court and questions of fact are determined by the jury.

2.21(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. Corroboration is not sufficient if it merely shows

the commission of the offense or the circumstances thereof. Corroboration of the testimony of victims shall not be required.

2.21(4) *Confession of the 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.

2.21(5) *Disposition of exhibits.*

a. In all criminal cases other than class "A" felonies, the clerk of court may dispose of all exhibits when 180 days have elapsed after the expiration of all sentences imposed in the case. In class "A" felonies, the clerk may dispose of all exhibits 180 days after the death of the defendant.

b. In no event shall the clerk of court dispose of exhibits when there is a pending appeal or postconviction-relief action.

c. Disposal of firearms and ammunition shall be by delivery to the Department of Public Safety for disposition as provided by law. Disposal of controlled substances shall be by delivery to the seizing law enforcement agency for disposal under Iowa Code section 124.506.

d. Any motion for return of an exhibit must be filed before the date when the clerk of court is permitted to dispose of the exhibit.

Rule 2.22 Verdict.

2.22(1) *Form of verdicts.* For each count submitted in the jury instructions, the jury must render a unanimous verdict of "guilty," "not guilty," or "not guilty by reason of insanity." The jury's verdict shall include a determination of the degree of offense on those counts where the level of offense must be determined.

2.22(2) *Proof necessary to sustain verdict of guilty.*

a. Reasonable doubt. Where there is a reasonable doubt of the defendant's guilt, the defendant is entitled to an acquittal.

b. Reasonable doubt as to degree. Where there is a reasonable doubt as to the degree of the offense of which the defendant is guilty, the defendant shall only be convicted of the degree as to which there is no reasonable doubt.

2.22(3) *Special interrogatories.*

a. For each special interrogatory submitted in the jury instructions, the jury's verdict form must include a place for an answer. The following issues require special interrogatories:

(1) Whether a witness was an accomplice when the evidence warrants its submission.

(2) Whether such accomplice's testimony was corroborated.

(3) Factual findings that subject the defendant to a greater minimum or maximum sentence, such as whether the defendant committed the offense with the use of a dangerous weapon.

(4) Whether an offense was sexually motivated for purposes of sex offender registration.

b. The parties may agree to waive the submission of special interrogatories on the accomplice issues identified in 2.22(3)(*a*)(1) and (2). Such waiver shall be made on the record.

2.22(4) *Multiple defendants or offenses.* If the jury cannot agree on a verdict as to all defendants or offenses, it may render a verdict as to those defendants or offenses where it agrees. A judgment shall be entered accordingly as to those defendants or offenses and the case as to the remaining defendants or offenses may be tried by another jury.

2.22(5) *Return of jury and verdict.*

a. Return and polling of unanimous verdict. The jury, unanimously agreeing upon a verdict, shall bring the verdict into court, where it shall be read aloud, and inquiry made of the jurors if it is their verdict. A party may then require a poll asking each juror if it is the juror's verdict. If any juror expresses 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.

b. Sealed verdicts. In any misdemeanor case, the court may permit the return of a sealed verdict on agreement of the parties. Such verdict shall be signed by all jurors, sealed, and delivered to the court, which shall enter it upon the record and disclose it to the parties as soon as practicable. The sealing of the verdict is equivalent to rendition in open court, but the jury shall not be polled or permitted to disagree with the verdict.

2.22(6) *Verdict insufficient or inconsistent; reconsideration.* If the jury renders a verdict that is in none of the forms specified in this rule, or renders a verdict of guilty in which it appears to the court that the jury was mistaken as to the law, or renders a verdict that is inconsistent, the court may direct the jury to reconsider it.

2.22(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.

2.22(8) *Acquittal on ground of insanity; commitment hearing.*

a. Insanity defense verdict form. If the defendant raises a defense of insanity, the verdict form shall include the defense as a possible verdict.

b. Commitment for evaluation.

(1) Upon a verdict of not guilty by reason of insanity, the court shall immediately order the defendant committed to a state mental health institute or other appropriate facility for a complete psychiatric evaluation and shall set a date for a hearing to inquire into the defendant's present mental condition.

(2) The court shall prepare written findings that shall be delivered to the facility at the time the defendant is admitted fully informing the chief medical officer of the facility of the reason for the commitment.

(3) The court shall direct the chief medical officer to report to the court in writing within 15 days of the admission of the defendant to the facility, stating the chief medical officer's diagnosis and opinion as to whether the defendant is mentally ill and dangerous to the defendant's self or others. An extension of time for the evaluation, not to exceed 15 days, may be granted upon the chief medical officer's request after due consideration of any objections or comments the defendant may have.

(4) Upon receipt of the report, the court shall promptly forward a copy to the defendant's attorney and to the prosecuting attorney.

c. Independent examination. The defendant may have a separate examination conducted at the facility by a licensed physician of the defendant's choice. The report of the independent examiner shall be submitted to the court.

d. Return for hearing. Upon receipt of the report or any subsequent report, the court shall hold a hearing to inquire into the defendant's mental condition. All parties shall be present. However, if the chief medical officer believes uninterrupted custody of the defendant at the facility is necessary to ensure the defendant's safety or the safety of others and states that finding in the report, the court may direct the chief medical officer to make arrangements for the defendant to appear at the hearing by phone or interactive audiovisual system.

e. Hearing; release or retention in custody.

(1) If, upon hearing, the court finds that the defendant is either not mentally ill or no longer dangerous to the defendant's self or others, the court shall order the defendant released. If, however, the court finds that the defendant is mentally ill and dangerous to the defendant's self or others, the court shall order the defendant committed to a state mental health institute or other appropriate

facility. The court shall give due consideration to the chief medical officer's findings and opinion along with any other relevant evidence that may be submitted.

(2) No more than 30 days after entry of an order for continued custody, and thereafter at intervals of not more than 60 days as long as the defendant is in custody, the chief medical officer of the facility to which the defendant is committed shall report to the court which entered the order. Each periodic report shall describe the defendant's condition and state the chief medical officer's prognosis if the defendant's condition has remained unchanged or has deteriorated. The court shall forward a copy of each report to the defendant's attorney and to the prosecuting attorney.

(3) If the chief medical officer reports at any time that the defendant is either no longer mentally ill or no longer dangerous to the defendant's self or others, the court shall hold a hearing to determine if continued custody and treatment of the defendant are necessary because the defendant remains mentally ill and dangerous to the defendant's self or others. If the court finds continued custody is necessary, the court shall order the defendant committed to a state mental health institute or other appropriate facility for further evaluation, treatment, and custody. Otherwise, the court shall order the release of the defendant.

Rule 2.23 Judgment.

2.23(1) *Entry of judgment.*

a. Acquittal. 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.

b. Conviction. Upon a guilty plea, guilty verdict, 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 15 days after the plea is entered or the verdict is rendered unless the defendant consents to a shorter time.

2.23(2) *Imposition of sentence.*

a. Written sentencing agreement. For misdemeanors and nonforcible class "D" felonies, with court approval, the parties may submit a written sentencing agreement pursuant to rule 2.27(3)(*c*) in place of in-person sentencing.

b. Informing the defendant. When the defendant appears for judgment, the court shall inform the defendant of the defendant's plea or the verdict and ask

whether the defendant has any legal cause to show why judgment should not be pronounced. The defendant, by timely motion, may show for cause against the entry of judgment any sufficient ground for a new trial or in arrest of judgment.

c. Incompetency. The provisions of Iowa Code chapter 812 apply to sentencing proceedings.

d. Procedure. Before imposing sentence, the court shall do all of the following:

(1) Verify that the defendant and the defendant's attorney have read and discussed the presentence investigation report and any addendum to the report.

(2) Provide the defendant's attorney an opportunity to speak on the defendant's behalf.

(3) Address the defendant personally in order to permit the defendant to make a statement or present any information to mitigate the defendant's sentence.

(4) Provide the prosecuting attorney an opportunity to speak.

(5) After hearing any statements presented, the court shall address any victim of the crime who is present at the sentencing and shall allow any victim to be reasonably heard, including, but not limited to, by presenting a victim-impact statement in the manner described in Iowa Code section 915.21.

e. Other witnesses or evidence. Before receiving victim statements, the trial court, in its discretion, may permit either side to present additional witnesses or evidence in support of its position.

f. Basis for sentence imposed. The court shall ensure that the basis for the sentence imposed appears in the record. The court shall consider all of the following:

(1) The recommendation of the prosecuting attorney, subject to the terms of the plea agreement, if any.

(2) The recommendation of the defendant's attorney, subject to the terms of the plea agreement, if any, and any statement of the defendant.

(3) The statement of the victim or victims of the offense, if any, as provided by law.

(4) The content and recommendation of the presentence investigation report.

(5) All other factors required by law to be considered.

g. 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. 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. The court shall state on the record the basis for the sentence imposed

and shall particularly state the reason for imposition of any consecutive sentence.

h. Notification of right to appeal. After imposing sentence in a case, the court shall advise the defendant in open court and on the record of the following:

(1) That the defendant has a statutory right to appeal.

(2) That if the defendant pled guilty to an offense other than a class "A" felony, no appeal may be taken without good cause.

(3) The deadline for filing an appeal.

(4) That the deadline for appeal is jurisdictional and that failing to file an appeal on time and in the manner specified in Iowa Rule of Appellate Procedure 6.101 will mean the defendant cannot appeal.

(5) That a person who is unable to pay the costs of appeal can apply to the court for appointment of counsel and the preparation of transcripts as provided in Iowa Code sections 814.9, 814.10, and 814.11.

i. 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.

Rule 2.24 Motions after trial.

2.24(1) *In general.* Permissible motions after trial include motions for new trial, motions in arrest of judgment, and motions to correct a sentence.

2.24(2) *New trial.*

a. Motion generally. A motion for new trial by the defendant shall be made not later than 45 days after verdict of guilty or special verdict upon which a judgment of conviction may be rendered and not later than 5 days before the date set for pronouncing judgment.

b. Grounds. The court, after giving the parties notice and an opportunity to be heard, may grant a new trial on any of the following grounds:

(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 2.27.

(2) When the jury has been prejudicially exposed to information the jury was not authorized to receive.

(3) When the jurors 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 jury was improperly instructed in a material matter.

(6) When the prosecuting attorney has committed prejudicial error or misconduct.

(7) When the verdict is contrary to law or contrary to the weight of the evidence.

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

c. Motion alleging newly discovered evidence. A motion for a new trial based upon newly discovered evidence may be made by the defendant after judgment when the defendant has discovered important and material evidence in the defendant's favor since the verdict that the defendant could not with reasonable diligence have discovered and produced at the trial.

(1) A motion based upon this ground shall be made without unreasonable delay and, in any event, within 2 years after final judgment, but such motion may be considered thereafter upon a showing of good cause.

(2) 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 or testimony of the witnesses by whom such evidence is expected to be given. The court may, upon request of the defendant, allow the defendant additional time to procure such affidavits or testimony for such length of time as may be reasonable under all circumstances of the case.

d. 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.

e. Effect of a new trial. Upon a new trial, the former verdict cannot be used or referred to either in evidence or in argument.

Comment: Former rule 2.24(2)(*a*) provided that the court could "grant a motion for a new trial even for a reason not asserted in the motion." Revised rule 2.24 does not deprive the court of that authority but makes clear that it may only be exercised after notice and an opportunity to be heard.

2.24(3) *Arrest of judgment.*

a. Motion.

(1) A defendant may file a motion in arrest of judgment to urge that no judgment be rendered on a finding, plea, or verdict of guilty.

(2) A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal.

b. Time of making motion. The motion must be made not later than 45 days after a guilty plea, guilty verdict, or special verdict upon which a judgment of conviction may be rendered, but in any case not later than 5 days before the date set for pronouncing judgment.

c. Grounds. Such motion shall be granted when upon the whole record no legal judgment can be pronounced.

d. On the court's own motion. The court may arrest the judgment on its own motion if grounds for doing so exist as set forth in rule 2.24(3)(*c*).

e. Effect of order arresting judgment.

(1) An order arresting judgment on the ground the guilty plea proceeding was defective places the defendant in the situation in which the defendant was immediately after the indictment was found. However, when the only ground upon which the guilty plea is found to be defective is failure to establish a factual basis for the charge, the court shall afford the state an opportunity to establish an adequate factual basis before arresting judgment.

(2) An order arresting judgment on any other ground places the defendant in the situation in which the defendant was immediately before the indictment was found.

f. Proceedings after order arresting judgment on any ground other than a defect in a guilty plea proceeding. If a motion arresting judgment is granted, but from the trial evidence, there is reasonable ground to believe the defendant is guilty of an offense and a new indictment can be framed, the court may order that a defendant in custody continue to be held in custody or that a defendant's bail be continued for a specified period pending the filing of a new indictment. 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 and any bail must be exonerated.

2.24(4) *General principles.*

a. Extensions. The time for filing motions for new trial or in arrest of judgment may be extended by the court for good cause.

b. Disposition. Upon a timely motion 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, appeal may be had only after judgment is pronounced.

d. Custody pending appellate determination. Pending determination by the appellate court of such appeal, the trial court shall determine whether the defendant shall remain in custody or be released, with or without bail. 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.

2.24(5) *Correction of sentence.*

a. Time when correction of sentence may be made. The district court may correct an illegal sentence at any time on motion of a party or on its own motion. Before correcting anything other than a clerical error, the court shall give notice to the parties and afford them an opportunity to be heard.

Comment: Former rule 2.24(5)(*a*) said, "The court may correct an illegal sentence at any time." The revised rule recognizes that the rules of criminal procedure govern proceedings in the trial courts, not the appellate courts. However, the revised rule is not intended to affect existing law regarding the authority of appellate courts to correct illegal sentences.

b. Definition of illegal sentence. An illegal sentence is a sentence that could not have been lawfully imposed for the defendant's conviction or convictions. An illegal sentence includes a separate sentence for a conviction where that conviction merged into another conviction. Challenges to the defendant's underlying convictions or claims that the sentencing court abused its discretion in imposing a sentence within legal limits do not raise illegal sentencing issues.

c. Credit for time served. The defendant shall receive full credit for time spent in custody under the sentence prior to correction or reduction.

Rule 2.25 Reserved.

Comment: Former rule 2.25, relating to the bill of exceptions, has been eliminated. The bill of exceptions is hereby abolished. If a party needs a record to be made of a matter that occurred off the record, it shall be the responsibility of that party to initiate that process by reasonable and appropriate means.

Rule 2.26 Execution of judgment and stay thereof.

2.26(1) *Execution of judgment.*

a. Mittimus. When a judgment of confinement is pronounced, a certified copy of the entry of judgment shall be furnished to the sheriff, who shall execute it accordingly. Upon delivery of the defendant to the person in charge of the place where the defendant is to be confined, the sheriff shall make a return of execution, which shall be filed.

b. Upon discharge. When the court orders a defendant in custody released, the person in charge of the place of confinement shall file a notice of release with the clerk of court.

c. 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.

d. Execution in other cases. When the judgment is 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 judgment. The sheriff shall return and file the same, with the sheriff's actions thereon endorsed, with the court in which the judgment was rendered, within the time specified by the court but not exceeding 70 days after the date of the certificate of such certified copy.

e. Available credit for time spent in custody before trial or sentencing. The defendant shall receive full credit for time spent in custody on account of the offense for which the defendant is convicted.

2.26(2) *Stay of execution.*

a. Confinement. A sentence of confinement shall be stayed if an appeal is taken and the defendant is released on bond as permitted by Iowa Code

section 811.1. The court shall fix the terms of release upon the posting of the appeal bond.

b. Probation. A sentencing order that places the defendant on probation may be stayed if an appeal is taken and an appeal bond is posted. If the sentencing order is not stayed, probation shall commence at the time of sentencing. If the order is stayed, the court shall fix the terms of the stay.

c. Monetary payments. Upon the posting of an appeal bond, the court may stay the collection of fines and restitution, including victim restitution, Category "A" restitution, and Category "B" restitution.

d. Sex offender registry. A stay of execution does not affect a defendant's requirement to comply with sex offender registration and notification.

Rule 2.27 Presence of the defendant; regulation of conduct by the court.

2.27(1) *Defendant's appearance.* The defendant is required to appear as follows:

a. Initial appearance, arraignment, and plea. The defendant must be present personally or by interactive audiovisual system at the initial appearance, arraignment, and plea unless a written waiver is filed as provided in rule 2.2(2)(*c*) or rule 2.8(1)(*e*).

b. Other pretrial court proceedings. The defendant must be present personally or by interactive audiovisual system at other pretrial court proceedings unless either (1) the proceeding is not a critical stage of the proceedings and the court waives the defendant's appearance or (2) the defendant waives appearance with the approval of the court.

c. Depositions. With the consent of the prosecuting attorney, the defendant may waive presence at a deposition. The defendant's attorney shall make a record of the waiver at the deposition. Otherwise, the defendant is required to be present subject to rule 2.13(5).

d. Trial proceedings. The defendant must be personally present at every stage of the trial, including the impaneling of the jury and the return of the verdict.

e. Sentencing. Except as provided in rule 2.27(3)(*c*), the defendant must be personally present at the imposition of sentence. Sentencing may proceed by interactive audiovisual system with the consent of all parties.

f. Defendant in prison or incarcerated by another authority. When the defendant is in prison, or is in the custody of the federal government or another state, at the defendant's request and with the agreement of the state the

defendant may appear by interactive audiovisual system for any matter except the trial itself.

2.27(2) *When the court may proceed in the defendant's absence.* In all cases, the progress of the trial or any other proceeding shall not be prevented whenever a defendant, initially present:

a. Is voluntarily absent after the trial or other proceeding has commenced.

b. Engages in conduct justifying exclusion from the courtroom.

2.27(3) *Presence not required.* A defendant need not be present in the following situations:

a. A corporation may appear by its attorney for all purposes.

b. The defendant's presence is not required for a reduction of sentence or a correction of a clerical error in a sentence.

c. If the offense is a misdemeanor or nonforcible class "D" felony and the parties have entered into a written agreement as to sentence that requests the court to proceed to sentencing without the presence of the parties or making of a record, the court may enter judgment in accordance with the sentencing agreement.

2.27(4) *Regulation of conduct in the courtroom.*

a. 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) Citing the defendant for contempt.

(2) Removing the defendant from the courtroom until the defendant promises to behave properly.

(3) Restraining the defendant, while keeping the defendant present.

b. The court may direct that any person in the courtroom be searched for a weapon or other prohibited item, and any weapon or other prohibited item may be retained subject to order of the court.

Comment: In Iowa, because of limited resources, not all courthouses screen visitors. It is therefore often possible to enter a courtroom without having gone through a body scanner. Yet persons entering a courtroom should recognize they have a diminished expectation of privacy as to items that would ordinarily be detected in a regular screening. This rule recognizes that the courts may need to act preemptively to protect the security and integrity of criminal proceedings, particularly in enforcing a prohibition on weapons in the courtroom or on the improper use of electronic devices. In exercising this authority, courts should be mindful of the potential for unfair prejudice when such searches are conducted in the presence of the jury.

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

Rule 2.28 Right to appointed counsel.

2.28(1) *Representation.* Every defendant, who is an indigent person as defined in Iowa Code section 815.9 and who faces the possibility of incarceration, is entitled to have counsel appointed to represent the defendant at every stage of the proceedings from the defendant's initial appearance before the court through appeal, including probation and parole revocation hearings as provided in section 815.10 and motions to correct illegal sentences unless the defendant waives such appointment.

2.28(2) *Limited appearances.* Limited appearances are not allowed in criminal cases where there is appointed counsel. However, appointed appellate counsel may file a limited appearance for the purpose of obtaining court records.

Rule 2.29 Withdrawal and duty of continuing representation.

2.29(1) *Withdrawal of counsel.*

a. Trial counsel may withdraw at any time after the dismissal of the indictment or acquittal of the defendant.

b. In general, if a judgment of conviction and sentence is entered, an appointed attorney may not withdraw without leave of the court.

(1) If the defendant does not wish to appeal, appointed counsel may withdraw at the expiration of the time for appeal from the judgment of conviction.

(2) If the defendant wishes to appeal, appointed counsel may not withdraw before filing with the district court a notice of appeal, an application for appointment of counsel, and an application for production of transcripts at state expense.

2.29(2) *Appointment of counsel on appeal.* An indigent defendant, as defined in Iowa Code section 815.9, convicted of an indictable offense or a simple misdemeanor where defendant faces the possibility of incarceration, is entitled to appointment of counsel on appeal or application for discretionary review to the supreme court. An indigent defendant is also entitled to appointment of counsel on application for certiorari to the supreme court if such defendant had a right to appointment of counsel in the proceeding from which certiorari review is sought.

a. Application for appointment of appellate counsel shall be made to the district court, which shall retain authority to act on the application after notice of appeal or application for discretionary review has been filed.

b. If the defendant has proceeded as an indigent in the trial court and a financial statement already has been filed pursuant to Iowa Code section 815.9, the defendant, upon making application for appointment of appellate counsel, shall be presumed to be indigent, and an additional financial statement shall not be required unless evidence is offered that the defendant is not indigent.

c. The defendant and appointed appellate counsel are under a continuing obligation to inform the trial court of any change in circumstances that would make the defendant ineligible to qualify as indigent.

2.29(3) If the trial court finds the defendant is ineligible for appointment of appellate counsel, it shall include in the record a statement of the reasons why counsel was not appointed. The defendant may apply to the supreme court for review of a trial court order denying the defendant appointed counsel. Such application must be filed with the supreme court within 10 days of the filing of the trial court order denying the defendant's request for appointed counsel.

2.29(4) Unless appellate counsel is immediately appointed, trial counsel shall determine whether the defendant wants to appeal and shall take steps to effect the appeal pursuant to rule 2.29(1)(*b*)(2).

2.29(5) Withdrawals allowed under this rule pertain only to the district court proceedings, and counsel of record in the district court will be deemed to be counsel in the appellate court in accordance with the provisions of Iowa Rule of Appellate Procedure 6.109(4) in the event of an appeal unless other counsel is retained or appointed and notice is given to the parties and the clerk of the supreme court. If trial counsel was not court appointed, trial counsel may withdraw from the appellate proceedings pursuant to Iowa Rule of Appellate Procedure 6.109(5).

Rule 2.30 Reserved.

Comment: Former rules 2.29 and 2.30 have been combined in new rule 2.29.

Rule 2.31 Compensation of appointed appellate counsel. Appointed appellate counsel's compensation shall be determined by the district court pursuant to the provisions of Iowa Code section 815.7.

Rule 2.32 Forms — Appointment of Counsel.

Comment: No changes have been made to existing forms.

Rule 2.33 Dismissal of prosecutions; right to speedy trial.

2.33(1) *Dismissal generally; effect.* The court, upon its own motion or the application of the prosecuting attorney, in the furtherance of justice, may order the dismissal of any pending 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 is a felony or an aggravated misdemeanor.

2.33(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 rule may be made by the prosecuting attorney or the defendant or by the court on its own motion.

a. When an adult is arrested for the commission of an offense, or, in the case of a minor, when the juvenile court enters an order waiving jurisdiction pursuant to Iowa Code section 232.45, and an indictment is not found against the defendant within 45 days, the court must order the prosecution be dismissed unless good cause to the contrary is shown. For purposes of this rule, the 45-day period commences for an adult only after the defendant has been taken before a magistrate for an initial appearance or a waiver of the initial appearance is filed.

b. The defendant must be brought to trial within 90 days after indictment is found or the court must order the indictment be dismissed unless good cause to the contrary is shown.

c. All criminal cases must be brought to trial within one year after the defendant's initial arraignment pursuant to rule 2.8 unless an extension is granted by the court, upon a showing of good cause.

d. The defendant personally or through the defendant's attorney may waive the deadlines in (*a*) and (*b*) above by filing a written waiver that substantially complies with rule 2.37—Form 10: *Waiver of Speedy Trial (90 Day).* A waiver of speedy trial operates to waive both deadlines. The deadline in (*c*) may be waived only by the defendant personally and on the record or by the filing of a written waiver that substantially complies with rule 2.37—Form 11: *Waiver of Speedy Trial (One Year).*

e. If the court directs the prosecution be dismissed, the defendant, if in custody, must be discharged, or the defendant's bail, if any, exonerated.

2.33(3) *Change of venue after jury selection commenced.* Whenever a change of venue is granted pursuant to Iowa Code section 803.2(2), the defendant may be brought to trial within 90 days of the grant of the change of venue, notwithstanding rule 2.33(2)(*b*).

Rule 2.34 Reserved.

Comment: The substance of former rule 2.34 has been moved to rule 2.11.

Rule 2.35 Reserved.

Comment: Former rule 2.35 has been removed as unnecessary.

Rule 2.36 Forms for search and arrest warrants.

Comment: No changes have been made to existing forms.

Rule 2.37 Forms other than warrants.

Comment: No changes have been made to forms 1–5 and 7. See revised form 6 and new forms 8–12 filed along with these amended rules.

SIMPLE MISDEMEANORS

Rule 2.51 Scope of rules and definitions.

Rule 2.51(1) *Scope.* The rules set forth in this section shall apply to trials, related proceedings, and appeals from conviction of simple misdemeanors.

Rule 2.51(2) *Definition.* For purposes of this section, "magistrate" includes judicial magistrates, district associate judges, and district judges.

Rule 2.52 Applicability of indictable offense rules. Procedures not provided for herein shall be governed by the provisions of the rules or statutes governing indictable offenses that are by their nature applicable to simple misdemeanor prosecutions.

Rule 2.53 To whom tried.

2.53(1) *Generally.* Judicial magistrates and district associate judges may hear, try, and determine simple misdemeanors.

2.53(2) *Transfer.* District judges may transfer any simple misdemeanors pending before them to a judicial magistrate or district associate judge.

2.53(3) *Joint trial.* When a simple misdemeanor arises out of the same transaction or occurrence as an indictable offense, preference should be given to consolidating the matters for trial.

2.53(4) *Jury trial.* A simple misdemeanor is not tried to a jury unless the defendant timely requests a jury trial within 10 days following the plea of not guilty.

Rule 2.54 The complaint. Prosecutions for simple misdemeanors shall be initiated by sworn complaint.

Rule 2.55 Contents of the complaint. The complaint shall contain:

2.55(1) The name of the county and of the court where the complaint is filed.

2.55(2) 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.

2.55(3) The name of the offense and the statutory provision or provisions alleged to have been violated, a brief statement of the acts or omissions by which the offense is alleged to have been committed, and a brief statement of the time and place of the offense, if known.

Rule 2.56 Approval of the complaint. The complaint shall be approved by the magistrate upon a determination of probable cause.

Rule 2.57 Arrest warrant. Immediately upon approving the complaint, the magistrate may issue an arrest warrant.

Rule 2.58 Appearance of the defendant.

2.58(1) *Arrest and appearance.* An officer making an arrest with or without a warrant shall take the arrested person before a magistrate either personally or by interactive audiovisual system as provided by rule 2.27(1)(*a*) within 24 hours unless no magistrate is available and in all events within 48 hours.

2.58(2) *Arrest without a warrant.* When a person is arrested without a warrant, a complaint shall be filed immediately.

2.58(3) *Determination of probable cause.* If the defendant received a citation or was arrested without a warrant, the magistrate shall, prior to further proceedings in the case, make a determination from the complaint or affidavits filed with the complaint 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 record.

2.58(4) *Prosecution of corporations.* A corporation may be summoned as provided in Iowa Code chapter 807.

Rule 2.59 Verification of complaint. At the defendant's initial appearance, the magistrate shall inform the defendant of the complaint and ensure the defendant receives a copy of it. The defendant must inform the magistrate whether the name and address shown in the complaint are the defendant's true and correct name and address. If the defendant gives no other name, the defendant is thereafter precluded from objecting to the complaint on the ground of being improperly named.

Rule 2.60 Advice of rights at the initial appearance. At the defendant's initial appearance, the magistrate shall inform the defendant of the following:

2.60(1) The defendant's right to retain counsel.

2.60(2) The defendant's right to request the appointment of counsel if the defendant faces the possibility of incarceration and is unable to obtain counsel by reason of indigency.

2.60(3) The circumstances under which the defendant may secure pretrial release.

2.60(4) The defendant's right to obtain review of any conditions imposed on the defendant's release.

2.60(5) That the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant.

Rule 2.61 Appointment of counsel. In cases where the defendant faces the possibility of incarceration, the magistrate shall appoint counsel for an indigent defendant in accordance with procedures established under rule 2.2(3). The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel if the defendant expresses a desire to do so.

Rule 2.62 Bail. Admission to bail shall be as provided for in Iowa Code chapter 811. Upon proper application, a district judge or district associate judge is authorized to review and amend the conditions of bail previously imposed. There shall be no more than one review except upon changed conditions.

Rule 2.63 Plea.

2.63(1) *Plea.* At the defendant's initial appearance, the defendant shall be required to enter a plea to the complaint. Permissible pleas include those allowed when the defendant is indicted as set forth in rule 2.8(2).

2.63(2) *Waiver of initial appearance.* Unless otherwise ordered by the court, a defendant may waive the initial appearance by executing and filing a written waiver that substantially complies with rule 2.76—Form 5: *Waiver of Initial Appearance for Simple Misdemeanors*. Thereafter, the date of the initial appearance is deemed the date the waiver was filed. A defendant may also waive the initial appearance by filing a written guilty plea or written plea agreement.

Rule 2.64 Trial.

2.64(1) Upon a plea other than guilty, the magistrate shall set a trial date, which shall be at least 15 days after the plea is entered.

2.64(2) The magistrate shall advise the defendant of the following:

a. The trial will be without a jury unless the defendant makes a demand for jury trial within 10 days following the plea of not guilty.

b. Failure to make a jury demand in the manner prescribed herein constitutes a waiver of jury trial.

c. If a demand for jury trial is made, the action shall be tried by a jury of six persons.

d. If the defendant so requests, the magistrate may set a trial date for a nonjury trial less than 15 days after a plea other than guilty is entered; however, the magistrate shall notify the defendant that such a request constitutes a waiver of jury trial.

2.64(3) Upon request, evidence to be offered as an exhibit at trial by any party, other than evidence which will be offered for purposes of rebuttal or impeachment, shall be provided to all parties at least 7 days prior to trial. Parties shall be limited to these exhibits except for good cause shown.

Rule 2.65 Pretrial matters. When the defendant has requested a jury trial, the magistrate may direct that certain matters be raised and addressed prior to the start of the jury trial.

Rule 2.66 Joint trials.

2.66(1) *Multiple complaints.* Two or more complaints against one defendant may be tried jointly.

2.66(2) *Multiple defendants.* Two or more defendants may be tried together 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.

2.66(3) *No joinder if prejudice.* Complaints or defendants shall not be jointly tried if the court finds that prejudice will result to a party.

2.66(4) *Separate judgments.* Jointly tried complaints or defendants shall be adjudged separately.

Rule 2.67 Forfeiture of collateral in lieu of appearance. In the event a simple misdemeanor is charged under the uniform citation and complaint as described

in Iowa Code section 805.6, and the defendant either has submitted an unsecured appearance bond as provided in that section or has submitted bail as provided in Iowa Code section 805.9(3), the court or the clerk of court may enter a conviction pursuant to the defendant's written appearance and may enter a judgment of forfeiture of the collateral in satisfaction of the judgment and sentence; provided that if the defendant submitted unsecured appearance bond or if bail remains uncollected, execution may issue upon the judgment of the court at any time after entry of the judgment.

Rule 2.68 Change of venue. A change of venue may be applied for and accomplished in the manner prescribed in rule 2.11(11).

Rule 2.69 Selection of jury; trial.

2.69(1) *Selection of panel.* If a jury trial is demanded, the magistrate shall notify the clerk of court of the time and place of trial. The clerk shall randomly select 14 names from the jury pool, which will constitute the jury panel for voir dire. The clerk shall notify these jurors of the time and place for trial.

2.69(2) *Incorporation of rule 2.18.* Except where inconsistent with this rule, rule 2.18 shall apply to juries in simple misdemeanor cases.

2.69(3) *Alternate jurors.* No alternate jurors shall be chosen.

2.69(4) *Jury of six.* The jury shall be comprised of six jurors.

2.69(5) *Trial.* The court shall conduct the trial in the manner of indictable cases in accordance with rule 2.19.

2.69(6) *Record.*

a. Generally. Trial of a simple misdemeanor offense shall not be reported; however, the magistrate may require electronic reporting upon advance notice to both parties. If the proceedings are not reported electronically, the magistrate shall make minutes of the testimony of each witness.

b. Stenographic reporting. A party may provide a reporter at such party's expense upon notice to all parties and with the magistrate's approval.

c. Transcript of electronic recording. If the trial has been reported electronically, the recording shall be retained by the court. Upon request, the recording shall be transcribed by a person designated by the court and a copy provided upon payment of actual cost or to an indigent defendant at state expense.

Rule 2.70 Judgment.

2.70(1) When the defendant is acquitted, the defendant must be immediately discharged.

2.70(2) When the defendant pleads guilty or is convicted, the magistrate may render judgment as allowed under the law. If the judgment and costs are not fully and immediately satisfied, the magistrate shall so indicate on the judgment.

Rule 2.71 Prior convictions. If the complaint alleges one or more prior convictions that subject the defendant to an increased sentence, the defendant shall have the opportunity in open court to affirm or deny that the defendant is the person previously convicted, or that the defendant was not represented by counsel and did not waive counsel when previously convicted.

2.71(1) Prior to accepting any affirmation by the defendant, the court shall determine that a factual basis exists for the affirmation and shall have a colloquy with the defendant as provided in rule 2.19(8). However, such colloquy shall omit reference to a waiver of trial by jury unless the defendant timely requested a jury.

2.71(2) If the defendant denies being the person previously convicted, sentence shall be postponed for such time as to permit a trial on the matter.

2.71(3) If jury trial was demanded, the court may, on the issue of identity, reconvene the jury that heard the current offense or dismiss that jury and submit the issue to another jury to be later impaneled. Other objections shall be determined by the court.

Rule 2.72 Appeals.

2.72(1) *Generally.* 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 posting of an appeal bond in the sum specified in the judgment.

2.72(2) *Notice of appeal.* A party takes an appeal by filing with the clerk of the district court a written notice of appeal not later than 10 days after judgment is rendered. Payment of a fine or service of a sentence of imprisonment does not waive the right to appeal nor render the appeal moot.

2.72(3) *Record.* When an appeal is taken, the magistrate shall promptly forward to the appropriate district court clerk a copy of the magistrate's minutes of the witnesses' testimony along with the exhibits. Within 10 days after an

appeal is taken, unless extended by order of a district judge or district associate judge, any transcript or electronic recording of the official report shall be filed by the magistrate unless it is already on file.

2.72(4) *Procedure.*

a. Within 14 days after taking the appeal, the appellant shall file and serve a brief in support of the appeal. The brief shall include statements of the specific issues presented for review and the precise relief requested.

b. Within 10 days after service of the appellant's brief, the appellee may file and serve a responding brief.

c. Either party may request, at the end of the party's brief, permission to be heard in oral argument.

d. Within 30 days after the filing, or expiration of time for filing, of the appellee's brief, the appeal shall be submitted to the court on the record and any briefs without oral argument unless otherwise ordered by the court.

e. If the court, on its own motion or motion of a party, finds the record to be inadequate, it may order the presentation of further evidence.

f. If the original action was tried by a district judge, the appeal shall be decided by a different district judge. If the original action was tried by a district associate judge, the appeal shall be decided by a district judge or a different district associate judge. If the original action was tried by a judicial magistrate, the appeal shall be decided by a district judge or district associate judge.

g. Findings of fact in the original action shall be binding on the judge deciding the appeal if supported by substantial evidence. The judge deciding the appeal may affirm, reverse and enter judgment as if the case were being originally tried, or enter any judgment that is just under the circumstances.

2.72(5) *Counsel.* In appropriate cases, the magistrate shall appoint counsel on appeal.

2.72(6) *Review by supreme court.* The defendant may apply for discretionary review pursuant to Iowa Code section 814.6(2)(*d*), and the plaintiff may apply for discretionary review pursuant to Iowa Code section 814.5(2)(*d*). Procedure on discretionary review shall be as prescribed in Iowa Rule of Appellate Procedure 6.106.

Rule 2.73 Motion for a new trial.

2.73(1) *Generally.* The magistrate, on motion of a defendant, may grant a new trial on the grounds set forth in rule 2.24(2)(*b*).

2.73(2) *Newly discovered evidence.* A motion for a new trial based on newly discovered evidence must be made within 6 months after the final judgment.

2.73(3) *Other grounds.* A motion for a new trial based on any other grounds shall be made within 7 days after a finding of guilty or within such further time as the magistrate may fix during the 7-day period.

Rule 2.74 Correction or reduction of sentence.

2.74(1) The magistrate may correct an illegal sentence at any time. The magistrate may correct a sentence imposed in an illegal manner or may reduce a sentence:

a. Within 10 days after the sentence is imposed.

b. Within 10 days after the receipt by the magistrate of a mandate issued upon affirmance of the judgment or dismissal of the appeal.

c. Within 10 days after entry of any order or judgment of the appellate court denying review of, or having the effect of upholding, a judgment of conviction.

2.74(2) The magistrate may also reduce a sentence upon revocation of probation as provided by law.

Rule 2.75 Reserved.

Rule 2.76 Forms.

Comment: No changes have been made to forms 1–4.

EXPUNGEMENT

Comment: No changes have been made to rules 2.80–2.85.

Rule 2.86 Forms.

Comment: See revised forms 1–5 filed along with these amended rules.