



# MINNESOTA JUDICIAL TRAINING UPDATE



(Read Time – Less than 10 minutes)

## LOTHENBACH STIPULATION

### Minn. R. Crim. P. 26.01, Subd. 4 – Stipulated Trial



**QUESTION: WHAT IS A “LOTHENBACH” STIPULATION?**

Unlike some other states, Minnesota does not permit conditional guilty pleas. Historically, in order to preserve the right to appeal a dispositive pretrial ruling, even when no other material facts were in dispute, a criminal defendant was first required to plead “not guilty” and then go through an unnecessary contested trial. Recognizing this was inefficient, the Minnesota Supreme Court in *State v. Lothenbach*, recognized a procedure allowing a defendant to plead not guilty, waive a jury trial, stipulate to the prosecution’s case, and obtain appellate review of a dispositive pretrial ruling without a contested trial. That procedure is now codified in Minn. R. Crim. P. 26.01, subd. 4. *State v. Lothenbach*, 296 N.W.2d 854, 857–58 (Minn. 1980).

- **Terminology Correction:** The official comment to Rule 26.01 states that Subdivision 4 “implements the procedure authorized by *State v. Lothenbach*.” The rule preserved the core concept but established more precise requirements. Because Rule 26.01, subd. 4 now governs, the more accurate term is “Rule 26.01, Subdivision 4 stipulation,” rather than the historical shorthand “Lothenbach stipulation” or “Lothenbach procedure.” See *State v. Myhre*, 875 N.W.2d 799, 804–05 (Minn. 2016). Nonetheless, most judges and attorneys will understand the historical shorthand.

**Because this procedure involves a defendant’s waiver of fundamental trial rights, caution must be taken to ensure a proper record is made.**

**There Are 7 Basic Steps to Every Rule 26.01, Subdivision 4 Stipulation**

*(Often still called a Lothenbach stipulation/procedure)*

1. The defendant must maintain the plea of not guilty.
2. Defendant and prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the Defendant prevails on appeal.

3. Defendant, after an opportunity to consult with counsel, must acknowledge and personally waive the following fundamental rights:
  - a) Right to a jury trial, after being advised of that right by the court or counsel and with the court's approval;
  - b) Right to testify at trial;
  - c) Right to have the prosecution witnesses testify in open court in the Defendant's presence;
  - d) Right to question those prosecution witnesses; and
  - e) Right to require favorable witnesses to testify for the defense in court.
4. The defendant must stipulate to the prosecution's evidence in a trial to the court and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.
  - a) Note: A stipulation to the prosecution's evidence does not mean that the defendant agrees that every factual assertion in the prosecution's evidence is true; it means that the court may consider the evidence and determine whether it proves each element beyond a reasonable doubt.
5. The defendant must acknowledge that appellate review will be limited to the dispositive pretrial issue, and not of the defendant's guilt, or any other preserved legal issues.
6. The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.
7. After consideration of the stipulated evidence, the court must make an appropriate finding; if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

**WARNING:** The court should carefully comply with each requirement of Minn. R. Crim. P. 26.01, subd. 4. Failure to obtain the required personal waivers and acknowledgments is error and may result in reversal. Although not every defect automatically requires reversal, appellate courts will examine whether the error affected the defendant's substantial rights and the fairness and integrity of the proceedings. *Myhre, supra.*

**IMPORTANT DISTINCTION: Subdivision 3 versus Subdivision 4****RULE OF THUMB – Don't Mix These Up!**

- **Stipulated facts:** “We agree this is what happened. Judge, apply the law.”
- **Stipulated evidence:** “We agree this is the evidence you may consider. Judge, decide what happened and whether the State proved guilt.”

**1. Rule 26.01, Subd. 4: Limited Appeal of a Dispositive Pretrial Ruling:**

*(Often still called a Lothenbach stipulation/procedure)*

Use Subdivision 4 (Lothenbach) when the parties agree that a specified pretrial ruling is dispositive or makes a contested trial unnecessary. The defendant stipulates to the prosecution's evidence solely to obtain appellate review of that ruling. The appeal is limited to the dispositive pretrial issue; the defendant may not challenge the sufficiency of the evidence or raise any other preserved legal issues.

**2. Rule 26.01, Subd. 3: Broader Appellate Review After a Stipulated Trial:**

Use Subdivision 3 when the parties agree that the court may decide guilt based on stipulated facts, stipulated evidence, or both, without limiting appellate review to a dispositive pretrial ruling. After a Subdivision 3 stipulated trial, the defendant may appeal the conviction more broadly than under Subdivision 4, including challenging whether the evidence is sufficient to support the conviction, and other preserved legal issues.

**Note:** The seven basic steps listed on page 3 apply specifically to a Subdivision 4 (Lothenbach) stipulation. However, a Subdivision 3 stipulated trial requires all the same steps except for #2 and #5 (e.g., Subdivision 3 does not require the parties to identify a dispositive pretrial ruling or limit the defendant's appeal to that issue.)

**Note:** A Subdivision 3 stipulated trial is usually more advantageous to the defense because appellate review is not limited to a specified pretrial ruling. By contrast, a Subdivision 4 (Lothenbach) stipulated trial limits appellate review to the specified pretrial ruling.

**QUESTION: Why Would a Defendant Use a Subdivision 4 (Lothenbach) Stipulation Rather Than a Subdivision 3 Stipulated Trial?**

**ANSWER:** Because the defendant cannot unilaterally choose either streamlined procedure. Both Subdivisions 3 and 4 require the prosecutor's agreement. A prosecutor may agree to a Subdivision 4 (Lothenbach) stipulation because it avoids an unnecessary contested trial while limiting appellate review to the specified pretrial ruling. The prosecutor may decline a Subdivision 3 stipulated trial because it would permit a broader appeal, including a challenge to the sufficiency of the evidence and other preserved legal issues.

**Note:** If the prosecutor will not agree to an appropriate stipulated procedure, the case must proceed to an ordinary trial.

**Practice Point:** Do not treat Subdivisions 3 and 4 as interchangeable. When the parties agree that a specified pretrial ruling is dispositive or makes a contested trial unnecessary, Subdivision 4 (Lothenbach) is the required procedure for preserving appellate review of that ruling. Use Subdivision 3 when the parties agree to a stipulated trial and the defendant wishes to preserve the ordinary scope of appellate review. Neither procedure may be imposed unilaterally.

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