JUVENILE COURT

Minnesota Rules of Juvenile Delinquency Procedure

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Minnesota Rules of Juvenile Delinquency Procedure

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TEXT OF RULES

Delinquency, Juvenile Petty Offenses, and Juvenile Traffic Offenses

Effective August 1, 1996

Rule 1. Scope, Application and General Purpose

1.01 Scope and Application

Rules 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section 260B.007, subdivision 6, juvenile petty matters as defined by Minnesota Statutes, section 260B.007, subdivision 16 and juvenile traffic matters as defined by Minnesota Statutes, section 260B.225. Procedures for juvenile traffic and petty matters are governed by Rule 17.

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to "child's counsel" includes the child who is proceeding pro se. Reference in these rules to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se.

Where any rule obligates the court to inform a child or other person of certain information, the information shall be provided in commonly understood, everyday language.

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, sections 1901-1963, these rules shall be construed to be consistent with that Act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 to 260.835 applies, these rules shall be construed to be consistent with that Act.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

1.02 General Purpose

The purpose of the juvenile rules is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota, and to assure that the constitutional rights of the child are protected. The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth. These rules shall be construed to achieve these purposes.

Comment--Rule 1

Minn. R. Juv. Del. P. 1.02 is based upon Minnesota Statutes 2002, section 260B.001, subdivision 2.

The Indian Child Welfare Act does not apply to placements of Indian children that are based upon an act that, if committed by an adult, would be deemed a crime. 25 U.S.C. section 1903(1) (1988). However, Minnesota Statutes 2002, section 260.761, subdivision 2, of the Minnesota Indian

Family Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (c), clauses (1), (2) and (3), following an adjudication for a misdemeanor-level delinquent act.

Rule 2. Attendance at Hearings and Privacy

2.01 Right to Attend Hearing

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

(A) the child, guardian ad litem appointed in the delinquency proceeding and counsel for the child;

(B) the parent(s), legal guardian, or legal custodian of the child and their counsel;

(C) the spouse of the child;

(D) the prosecuting attorney;

(E) other persons requested by the parties listed in (A) through (D) and approved by the court;

(F) persons authorized by the court, including a guardian ad litem appointed for the child in another matter, under such conditions as the court may approve;

(G) persons authorized by statute, under such conditions as the court may approve; and

(H) any person who is entitled to receive a summons or notice under these rules.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

2.02 Exclusion of Persons Who Have a Right to Attend Hearings

The court may temporarily exclude any person, except counsel and the guardian ad litem appointed in the delinquency proceeding, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child cannot be excluded on the grounds that it is in the best interests of the child to do so.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

2.03 Presence Required

Subdivision 1. Child. The child shall have the right to be present at all hearings. The child is deemed to waive the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings. Disruption of the proceedings occurs if the child, after warning by the court, engages in conduct which interrupts the orderly procedure and decorum of the court. The court may use all methods of restraint necessary to conduct the proceedings in an orderly manner. If the child is restrained or removed from the courtroom, the court shall state the reasons for the restraint or removal on the record. Except at trials and dispositional hearings, the child's appearance may be waived if the child is hospitalized in a psychiatric ward and the treating physician states in writing the reasons why not appearing would serve the child's best interests.

Subd. 2. Counsel.

(A) Counsel for the child shall be present at all hearings.

(B) The prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion.

Subd. 3. Parent, Legal Guardian or Legal Custodian. The parent, legal guardian or legal custodian of a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding shall accompany the child to all hearings unless excused by the court for good cause shown. If such person fails to attend a hearing with the child without excuse, the court may issue an arrest warrant and/or hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, legal guardian, or legal custodian fails to appear.

2.04 Right to Participate

Subdivision 1. Child and Prosecuting Attorney. The child and prosecuting attorney have the right to participate in all hearings.

Subd. 2. Guardian Ad Litem. The guardian ad litem appointed in the delinquency proceeding has a right to participate and advocate for the best interests of the child at all hearings.

Subd. 3. Parent(s), Legal Guardian, or Legal Custodian. Except in their role as guardian ad litem for the child, the parent(s), legal guardian, or legal custodian may not participate separately at hearings until the dispositional stage of the proceedings and the court shall advise them of this right. A parent, legal guardian, or legal custodian for the child is not subject to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. A parent, legal guardian, or legal custodian shall not participate as counsel for the child unless licensed to practice law.

Subd. 4. Generally. Persons represented by counsel, who have a right to participate, shall participate through their counsel. Unrepresented persons may participate on their own behalf.

(Amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

2.05 Ex Parte Communications

The court shall not receive or consider any ex parte communication from anyone concerning a proceeding, including conditions of release, detention, evidence, adjudication, disposition, or any other matter. The court shall fully disclose to all counsel on the record any attempted ex parte communication.

Comment--Rule 2

Minn. R. Juv. Del. P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing where a juvenile over age 16 is alleged to have committed a felony, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minnesota Statutes 2002, section 260B.163, subdivision 1, paragraph (c). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minnesota Statutes 1994, section 609.115, subdivision 6.

Minn. R. Juv. Del. P. 2.02 permits exclusion of persons from hearings, even when they have a right to participate, to serve the child's best interests. For example, sometimes expert opinions are offered to the court regarding a child's psychological profile or amenability to probation supervision. Counsel are usually aware of such opinions and if it serves no useful purpose or may even be detrimental to a child's best interests to hear these opinions, it may be appropriate to temporarily exclude the child from the hearing. Obviously, this should be brought to the court's attention either before the hearing or at a bench conference. Because a child charged with a juvenile petty or juvenile traffic offense does not have a right to appointment of counsel at public expense, that child cannot be excluded unless the child is represented by counsel.

Minn. R. Juv. Del. P. 2.03 subd 2 provides that the prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion. On occasion, because of time constraints and distance, it may be impossible for the prosecuting attorney to be present in person at a particular hearing. So long as the prosecuting attorney is available by telephone conference, the hearing could proceed without the prosecutor actually being present.

Minn. R. Juv. Del. P. 2.05 requires full disclosure by the court to all counsel on the record of any attempted ex parte communication. Juvenile court has historically been less formal and more casual than other court proceedings. As a result, lawyers, probation and court services personnel, law enforcement, victims, and relatives of the child have sometimes attempted and succeeded in having ex parte contact with the juvenile court judge. As the sanctions for delinquency become more severe, due process safeguards become more imperative.

Rule 3. Right to Counsel

3.01 Generally

The child has the right to be represented by an attorney. This right attaches no later than when the child first appears in court. The attorney shall initially consult with the child privately, outside of the presence of the child's parent(s), legal guardian or legal custodian. The attorney shall act solely as the counsel for the child.

3.02 Appointment of Counsel

Subdivision 1. Delinquency Felonies and Gross Misdemeanors. In any delinquency proceeding in which the child is charged with a felony or gross misdemeanor, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 2. Delinquency Misdemeanors. In any delinquency proceeding in which the child is charged with a misdemeanor, the court shall appoint counsel at public expense to represent the child if the child cannot afford counsel and private counsel has not been retained to represent the child, and the child has not waived the right to counsel. If the child waives the right to counsel, the court may appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 3. Out-of-Home Placement. In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child. No out-of-home placement may be made in disposition proceedings, in violation proceedings, or in subsequent contempt proceedings, if the child was not initially represented by

counsel or standby counsel, except as provided herein. If out-of-home placement is based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

Subd. 4. Probation Violation and Modification of Disposition for Delinquent Child. In any proceeding in which a delinquent child is alleged to have violated the terms of probation, or where a modification of disposition is proposed, the child has the right to appointment of counsel at public expense. If the child waives the right to counsel, the court shall appoint standby counsel.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, except:

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 6. Detention. Every child has the right to be represented by an attorney at a detention hearing. An attorney shall be appointed for any child appearing at a detention hearing who cannot afford to hire an attorney. If the child waives representation, standby counsel shall be appointed.

Subd. 7. Child Incompetent to Proceed. Every child shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney.

Subd. 8. Appearance before a Grand Jury. A child appearing before a grand jury as a witness in a matter which is under the jurisdiction of the Juvenile Court shall be represented by an attorney at public expense if the child cannot afford to retain private counsel. If the child has effectively waived immunity from self-incrimination or has been granted use immunity, the attorney for the child shall be present while the witness is testifying. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the child witness while the child is testifying.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

3.03 Dual Representation

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to Rule 13.07, and two or more of them are represented by the same counsel, the following procedure shall be followed:

(A) The court shall address each child individually on the record. The court shall advise the child of the potential danger of dual representation and give the child the opportunity to ask the court questions about the nature and consequences of dual representation. The child shall be given the opportunity to consult with outside counsel.

(B) On the record, the court shall ask each child whether the child

(1) understands the right to be effectively represented by a lawyer;

(2) understands the details of the lawyer's possible conflict of interest;

(3) understands the possible dangers in being represented by a lawyer with these possible conflicts;

(4) discussed the issue of dual representation with a separate lawyer; and

(5) wants a separate lawyer or waives their Sixth Amendment protections.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

3.04 Waiver of Right to Counsel

Subdivision 1. Conditions of Waiver. The following provision does not apply to Juvenile Petty or Traffic Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing or on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

Subd. 2. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

Subd. 3. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel as required by Rule 3.02.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective July 1, 2015.)

3.05 Renewal of Advisory

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record at the beginning of each hearing at which the child is not represented by counsel.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

3.06 Eligibility for Court Appointed Counsel at Public Expense

Subdivision 1. When Parent or Child Cannot Afford to Retain Counsel. A child and his parent(s) are financially unable to obtain counsel if the child is unable to obtain adequate representation without substantial hardship for the child or the child's family. The court shall inquire to determine the financial eligibility of a child for the appointment of counsel. The ability to pay part of the cost of adequate representation shall not preclude the appointment of counsel for the child.

Subd. 2. When Parent Can Afford to Retain Counsel. If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. After giving the parent(s) a reasonable opportunity to be heard, the court may order that service of counsel shall be at the parent(s)'s expense in whole or in part depending upon their ability to pay.

3.07 Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian Ad Litem to Counsel

Subdivision 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s). The parent(s), legal guardian(s) or legal custodian(s) of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the charging document have been proved. The court has discretion to appoint an attorney to represent the parent(s), legal guardian(s) or legal custodian(s) at public expense if they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

Subd. 2. Right of Guardian Ad Litem to Counsel. In the event of a conflict between the child and the guardian ad litem, the court may appoint separate counsel to represent the guardian ad litem appointed in the delinquency proceeding.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

3.08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator a certificate of representation prior to appearing.

Once a lawyer has filed a certificate of representation, that lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court ex parte.

A lawyer who wishes to withdraw from a case must file a written motion and serve it on the prosecuting attorney, and on the client by mail or personal service; and the lawyer shall have the matter heard by the court. No motion of withdrawal will be heard within 10 days of a date certain for hearing or trial.

If the court approves the withdrawal, it shall be effective when the order has been served on the prosecuting attorney, and on the client by mail or personal service, and due proof of such service has been filed with the court administrator.

(Added December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective December 1, 2012; amended effective July 1, 2015.)

Comment--Rule 3

Minn. R. Juv. Del. P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minnesota Statutes 2002, section 260B.163, subdivision 4. The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Minn. R. Juv. Del. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes 2002, section 611.262. Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.

Minn. R. Juv. Del. P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v. Wainwright, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In In re Gault, 387 U.S. 1 (1967), the Supreme Court extended to juveniles the constitutional right to counsel in state delinquency proceedings. Minnesota Statutes 2002, section 260B.163, subdivision 4, expands the right to counsel and requires that an attorney shall be appointed in any delinquency proceeding in which a child is charged with a felony or gross misdemeanor.

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, Faretta v. California, 422 U.S. 806 (1975), State v. Richards, 456 N.W.2d 260 (Minn. 1990), then Minn. R. Juv. Del. P. 3.02 subd 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings. See, e.g., McKaskle v. Wiggins, 465 U.S. 168 (1984); State v. Jones, 266 N.W.2d 706 (Minn. 1978); Burt v. State, 256 N.W.2d 633 (Minn. 1977); State v. Graff, 510 N.W.2d 212 (Minn. Ct. App. 1993) pet. for rev. denied (Minn. Feb. 24, 1994); State v. Savior, 480 N.W.2d 693 (Minn. Ct. App. 1992); State v. Parson, 457 N.W.2d 261 (Minn. Ct. App. 1990) pet. for rev. denied (Minn. July 31, 1990); State v. Lande, 376 N.W.2d 483 (Minn. Ct. App. 1985) pet. for rev. denied (Minn. Jan. 17, 1986).

In McKaskle v. Wiggins, the Supreme Court concluded that appointment of standby counsel was consistent with a defendant's Faretta right to proceed pro se, so long as standby counsel did not stifle the defendant's ability to preserve actual control over the case and to maintain the appearance of pro se representation. The child must have an opportunity to consult with standby counsel during every stage of the proceedings. State v. Richards, 495 N.W.2d 187 (Minn. 1992).

In order to vindicate this right, counsel must be physically present. "[I]t would be virtually impossible for a standby counsel to provide assistance, much less effective assistance, to a criminal client when that counsel has not been physically present during the taking of the testimony and all of the court proceedings that preceded the request ... [O]nce the trial court ... appoint[s] standby counsel, that standby counsel must be physically present in the courtroom from the time of appointment through all proceedings until the proceedings conclude." Parson, 457 N.W.2d at 263. Where the child proceeds pro se, it is the preferred practice for counsel to remain at the back of the courtroom and be available for consultation. Savior, 480 N.W.2d at 694-95; Parson, 457 N.W.2d at 263; Lande, 376 N.W.2d at 485. Moreover, standby counsel must be present at all bench and chambers conferences, even where the child is excluded. State v. Richards, 495 N.W.2d 187, 196 (Minn. 1992).

Minn. R. Juv. Del. P. 3.02 subd 2 requires a court to appoint counsel for a child charged with a misdemeanor in a delinquency proceeding unless that child affirmatively waives counsel as provided in Minn. R. Juv. Del. P. 3.04. Minn. R. Juv. Del. P. 3.02 subd 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of counsel without the appointment of standby counsel. In Argersinger v. Hamlin, 407 U.S. 25, 37 (1972), the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel." In Scott v. Illinois, 440 U.S. 367 (1979), the Court clarified any ambiguity when it held that in misdemeanor proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 484, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.

At the very least, Minn. R. Juv. Del. P. 3.02 subd 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. See Minn. R. Juv. Del. P. 17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the child or prejudicing the right to a fair and impartial trial. Minn. R. Juv. Del. P. 3.02 subd 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated without the assistance of counsel, if that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes

a manifest injustice"). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

Minnesota Statutes, section 260B.007, subdivision 16, defines "juvenile petty offenses," and includes most offenses that would be misdemeanors if committed by an adult. Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes 2002, section 260B.235, subdivision 4. However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court is authorized to impose a disposition that includes out-of-home placement, then the provisions of Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 are applicable and provide the child a right to counsel at public expense.

Minn. R. Juv. Del. P. 3.02 subd 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, at any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.

Minn. R. Juv. Del. P. 3.02 subd 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minnesota Statutes 2002, sections 260C.007, subdivision 6, clause (15) and 260C.201. See also Minn. R. Juv. Del. P. 20.01. Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.

Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn. R. Crim. P. 17.03 subd 5.

Minn. R. Juv. Del. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes 2002, section 260B.163, subdivision 10 ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived").

While recognizing a right to waive counsel and proceed pro se, Minn. R. Juv. Del. P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., State v. Rubin, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor

charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty"); Jones, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); Burt, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver").

In State v. Rubin, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, Providing Defense Services, sections 5-7.3 (1980); Minn. R. Crim. P. 5.04. Minn. R. Juv. Del. P. 3.04 subd 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver. Prior to an initial waiver of counsel, a child must consult privately with an attorney who will describe the scope of the right to counsel and the disadvantages of self-representation. Following consultation with counsel, any waiver must be in writing and on the record, and counsel shall appear with the child to assure the court that private consultation and full discussion has occurred.

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. Del. P. 3.04 subd 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, 511 U.S. 738 (1994); United States v. Johnson, 28 F.3d 151 (D.C. Cir. 1994) (use of prior juvenile convictions to enhance adult sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn. R. Juv. Del. P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

Minn. R. Juv. Del. P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in Minn. R. Crim. P. 5.04 subds 3-5.

Minn. R. Juv. Del. P. 3.06 subd 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes 2002, section 260B.331, subdivision 5 ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees"). See, e.g., In re M.S.M., 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

Minn. R. Juv. Del. P. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent

and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at public expense if they are eligible for such services.

Rule 4. Warrants

4.01 Search Warrants Upon Oral Testimony

Issuance of search warrants based on oral testimony is governed by Minn. R. Crim. P. 33.04 and 36, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the warrant that it shall be filed in the juvenile court. When so designated, the warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents shall be deemed to be a juvenile court record under Rule 30.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

4.02 Search Warrants Upon Written Application

Issuance of search warrants based upon written application is governed by Minnesota Statutes, sections 626.04 to 626.18, and Minn. R. Crim. P. 33.04, 33.05, and 37, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the warrant that it shall be filed in the juvenile court. When so designated, the search warrant, warrant application, affidavit(s) or other supporting documents and inventories, including statements of unsuccessful execution and documents required to be served shall be deemed to be a juvenile court record under Rule 30.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015; amended effective October 1, 2016.)

4.03 Warrants for Immediate Custody

Subdivision 1. Probable Cause Required. Probable cause may be established as authorized by Rule 6.05.

Subd. 2. Warrant for Delinquent Offenders. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has committed a delinquent act as defined by Minnesota Statutes, section 260B.007, subdivision 6, and:

(A) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

(B) the child or others are in danger of imminent harm; or

(C) the child has left the custody of the detaining authority without permission of the court; or

(D) the child has violated a court order; or

(E) the child has violated the terms of probation.

Subd. 3. Warrant for Juvenile Petty or Traffic Offenders. The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16, or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225; and

(B) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

Subd. 4. Contents of Warrant for Immediate Custody. A warrant for immediate custody shall be signed by a judge and shall:

(A) order the child to be brought immediately before the court or the child to be taken to a detention facility in accordance with Rule 5.02, subdivisions 3 and 4, to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;

(B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(C) state the age and sex of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(D) state the reasons why the child is being taken into custody;

(E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and

(F) state the date when issued, and the county and court where issued.

Subd. 5. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 6. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 7. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 8. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a delinquency misdemeanor, juvenile petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 p.m. and 8:00 a.m. on any other day except by direction of the judge.

Subd. 9. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 10. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant

for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective July 1, 2015.)

Comment--Rule 4

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn. R. Juv. Del. P. 4.03 subd 2. See Minnesota Statutes 2002, section 260B.154. Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the charging document, any supporting documents or sworn supplemental testimony to believe that the child committed an act governed by Minnesota Statutes, section 260B.007, subdivision 6 or 16, or Minnesota Statutes, section 260B.225. In addition, the court must also find either that the summons was personally served on the child and the child failed to appear, that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent, that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minnesota Statutes 2002, section 260B.154.

Minn. R. Juv. Del. P. 4.03 subd 4 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn. R. Juv. Del. P. 5.07 within thirty-six (36) hours, excluding Saturdays, Sundays, and holidays, or within twenty-four hours, excluding Saturdays, Sundays, and holidays, if the child is detained in an adult jail or municipal lockup.

Under Minn. R. Juv. Del. P. 4.03 subd 5, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn. R. Crim. P. 3.03 subd 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of delinquency misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the prescribed period of time.

Rule 5. Detention

5.01 Scope and General Principles

Rule 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

5.02 Definitions

Subdivision 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when:

(A) the child is taken into custody;

(B) the court orders detention of the child;

(C) the court orders out-of-home placement; or

(D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 2. Detaining Authority. The detaining officer, the detaining officer's supervisor, the person in charge of the detention facility, the prosecuting attorney or the court is a detaining authority for the purposes of this rule.

Subd. 3. Place of Detention for Juvenile Delinquent Offenders. A place of detention for a juvenile delinquent offender can be any one of the following places:

(A) the child's home subject to electronic home monitoring or house arrest with substantial liberty restrictions;

(B) a foster care or shelter care facility;

(C) a secure detention facility;

(D) a detoxification, chemical dependency, or psychiatric facility;

(E) an adult jail; or

(F) any other place of detention.

Subd. 4. Place of Detention for Juvenile Petty or Traffic Offenders. A place of detention for a juvenile petty or traffic offender can be any one of the following places:

(A) a child's relative;

(B) a standby or temporary custodian under Minnesota Statutes, chapter 257B; or

(C) a shelter care facility.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective July 1, 2015.)

5.03 Detention Decision

Subdivision 1. Presumption for Unconditional Release. The child shall be released unless:

(A) the child would endanger self or others;

(B) the child would not appear for a court hearing;

(C) the child would not remain in the care or control of the person into whose lawful custody the child is released; or

(D) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 2. Detention Factors. The following nonexclusive factors may justify a decision to detain a child:

(A) the child is charged with the misdemeanor, gross misdemeanor or felony offense of arson, assault, prostitution or a criminal sexual offense;

(B) the child was taken into custody for an offense which would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm;

(C) the child was taken into custody for additional felony charges while other delinquency charges are pending;

(D) the child was taken into custody for a felony and, as a result of prior delinquency adjudication(s), has received an out-of-home placement;

(E) the child was an escapee from an institution or other placement facility to which the court ordered the child;

(F) the child has a demonstrable recent record of willful failure to appear at juvenile proceedings;

(G) the child is a fugitive from another jurisdiction; or

(H) the above factors are not met but the detaining authority documents in writing, objective and articulable reasons why the child's welfare or public safety would be immediately endangered if the child were released.

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in Rule 5.03, subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

Subd. 4. Factors Which Cannot Support Detention Decision. In deciding whether detention is justified, the detaining authority shall not consider the child or the child's family's race, color, gender, sexual orientation, religion, national origin, economic or public assistance status, family structure or residential mobility.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

5.04 Release or Continued Detention

Subdivision 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.

(A) *Detention Required.* Unless the court orders an earlier release, the child may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 2. For Child Taken Into Custody Without a Court Order or Warrant.

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in Rule 5.03, that:

(1) the child would endanger self or others;

(2) the child would not appear for a court hearing;

(3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or

(4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

(B) *Discretionary Release Any Time Before Detention Hearing.* The detaining authority has discretion to release a child any time before the detention hearing if other less restrictive measures would be adequate.

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that time period, a charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The court may extend the time for a detention hearing for good cause pursuant to Rule 5.07, subdivision 7 only if a charging document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays unless a charging document has been filed with the court within that time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The time for a detention hearing shall not be extended.

Subd. 4. Probable Cause Determination.

(A) *Time Limit.* The child shall be released no later than forty-eight (48) hours after being taken into custody without a court order or warrant signed by a judge, including the day the child was detained, Saturdays, Sundays and legal holidays, unless the court determines there is probable cause to believe the child committed the offense(s) alleged.

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. Oral testimony shall be recorded and retained by the judge. Facts that are contained in a written document may be presented to the judge by telephone, video, or other electronic means. If probable cause is determined on facts contained in a written document and the judge is not available to sign the determination, the document shall be presented to the judge for signature within

two (2) business days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

(C) *Approval of Prosecuting Attorney.* No request for a probable cause determination may proceed without approval by the prosecuting attorney. The person requesting the probable cause determination shall, under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, state that the prosecutor approves the request. If the prosecutor is unavailable, the court may make the probable cause determination if the matter should not be delayed.

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to Rule 5, and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Subd. 5. Release of Any Child at Any Time by the Court and Conditions of Release. Only the court may impose conditions of release. The court at any time may release a child and may impose one or more of the following conditions:

(A) require the parent(s), legal guardian, legal custodian or child to post bail;

(B) place restrictions on the child's travel, associations or place of abode during the period of the child's release; or

(C) electronic home monitoring or any other conditions deemed reasonably necessary and consistent with factors for detaining the child.

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 6. Release to Custody of Parent or Other Responsible Adult. A child released from a place of detention shall be released to the custody of the child's parent(s), legal guardian, or legal custodian if deemed appropriate by the detaining authority. If these individuals are unavailable or deemed inappropriate, the detaining authority may release the child to a member of the extended family or kinship network or other suitable adult deemed appropriate by the detaining authority and acceptable to the child.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective December 1, 2012; amended effective July 1, 2015.)

5.05 Detention Reports

Subdivision 1. Report by Detaining Authority. When a child has been detained, the detaining officer or his agent shall file a signed report with the court and deliver a copy to the supervisor of the facility containing the following information:

(A) the time the child was taken into custody and the reasons why the child was taken into custody;

(B) the time the child was delivered to the place of detention and the reasons why the child is being held there;

(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to Rule 3.02, subdivision 6, and the time such notification was given to each or the efforts made to notify them.

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time of the detention hearing, whichever is earlier.

Subd. 4. Notice to Child's Counsel; Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Child's counsel shall have immediate and continuing access to the child.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

5.06 Identification Procedures

Subdivision 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without a court order.

(B) *Report.* A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony or gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to Rule 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to Rule 10.05, subdivision 2(A).

(B) *Right to Counsel During Line-Up for Child Alleged to be Delinquent.* A child has the right to have counsel present when placed in a line-up related to a delinquent act for which the child has been taken into custody unless exigent circumstances exist such that providing counsel would

unduly interfere with a prompt investigation of the crime. When a delinquency petition has been filed, counsel for the child shall be present for any line-up. Any identification evidence obtained without the presence of counsel shall be inadmissible, unless the line-up occurred before the filing of the petition and exigent circumstances existed preventing the presence of counsel.

(C) *Report.* A report stating the name of the children who participated in the line-up and the date of the line-up shall be filed with the court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

5.07 Detention Hearing

Subdivision 1. Time and Filing. For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six (36) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

(A) a report or reports that the child is being held in detention filed pursuant to Rule 5.05; and

(B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to Rule 25. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

(B) *Victim.* If a detained child is charged with a crime of violence against a person or attempting a crime of violence against a person, the court administrator shall make reasonable and good faith efforts to notify the victim of the alleged crime of:

(1) the time and place of the detention hearing;

(2) the name and telephone number of a person that can be contacted for additional information; and

(3) the right of the victim and victim's family to attend the detention hearing.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent, legal guardian or legal custodian.

Subd. 3. Advice of Rights. At the beginning of the detention hearing, the court shall advise all persons present of:

(A) the reasons why the child was taken into custody;

(B) the allegations of the charging document;

(C) the purpose and scope of the detention hearing;

(D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and

(E) the right of the child to remain silent.

Subd. 4. Evidence. The court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child. The court may not admit evidence of privileged communications.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond the time set in subdivision 1 of this rule if, after a hearing, the court finds:

(A) probable cause to believe the child committed the offense(s) alleged pursuant to Rule 5.04, subdivision 4; and

(B) there is reason to believe that if the child were released, after consideration of the factors set forth in Rule 5.03, that:

(1) the child would endanger self or others;

(2) the child would not appear for a court hearing;

(3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or

(4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by Rule 5.07, subdivision 5, are not made.

(B) *Detention.* If the findings required by Rule 5.07, subdivision 5, are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(C) *Notice of Next Hearing.* On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

Subd. 7. Extension of Time for Detention Hearing. For good cause shown, the court may extend the time for a detention hearing by twenty-four (24) hours on written application of the prosecuting attorney, if the application for extension is filed with the court within the time prescribed

by this rule. The court may extend the time for one additional twenty-four (24) hour period upon a second written application being filed within the extended time previously ordered by the court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

5.08 Detention Review

Subdivision 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

Subd. 2. Formal Review. The court may schedule a formal review of detention at any time.

(A) *Request by Child, Child's Counsel or Prosecuting Attorney.* If the court finds a substantial basis exists for the request to schedule a hearing to review detention, a hearing shall be scheduled as soon as possible, and at least within eight (8) days of the request.

(B) *Notice.* The person requesting a formal review shall make the request by motion as provided in Rule 27.

(C) *Relevant Evidence.* Subject to constitutional limitations and privileged communications, the court may admit any evidence, including reliable hearsay and opinion evidence that is relevant to the decision regarding continued detention of the child.

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to Rule 5.07, subdivision 5. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

Comment--Rule 5

There is a presumption in favor of releasing an accused child unconditionally. If the child cannot be released unconditionally, the least restrictive liberty restriction is favored. The American Bar Association's Juvenile Justice Standards Relating to Interim Status: The Release Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980) describes the general principles governing liberty restrictions. These general principles and policy considerations do not determine the outcomes of specific cases. Rather, they provide the process framework within which law enforcement and intake personnel, prosecuting attorneys and judges decide individual cases. When these decision makers decide whether or not to place a child in detention or to impose other physical liberty restrictions, the following policy considerations apply: to the greatest extent possible, any interim liberty restrictions should respect the autonomy interests of the accused child and family, ensure equality of treatment by race, class, ethnicity, and sex, ensure the child promptly receives access and continuing access to legal assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other nonphysical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

Minnesota Statutes 2002, section 260B.154, authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minnesota Statutes 2002, section 260B.175, authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest; or 3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision. Minn. R. Juv. Del. P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes 2002, section 260B.176, authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. Del. P. 5.02 subd 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes 2002, section 260B.007, subdivision 7) or shelter care facility (Minnesota Statutes 2002, section 260B.007, subdivision 15), in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes 2002, section 260B.007, subdivision 14), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn. R. Juv. Del. P. 5.03 subd 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn. R. Juv. Del. P. 5.03 subd 2 provides some nonexclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn. R. Juv. Del. P. 5.03 subd 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes 2002, section 260B.125, subdivisions 3 and 4. However, detaining authorities should exercise individualized discretion. Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The nonexclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. Del. P. 5.03 subd 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. Del. P. 5.03 subd 2.

Minn. R. Juv. Del. P. 5.03 governs the initial custody decisions affecting a juvenile by the police, detention and court intake personnel, and the prosecuting attorney. Minn. R. Juv. Del. P. 5.04 subd 1 governs the liberty restrictions on a child taken into custody pursuant to a court order or warrant. Minn. R. Juv. Del. P. 5.04 subd 2 governs the liberty restrictions of a child taken into custody by a peace officer or other person, and then brought to a detention facility or other place of custody.

Minn. R. Juv. Del. P. 5.04 subd 3 is based upon Minnesota Statutes 2002, section 260B.176, subdivision 2. The statute provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. Minnesota Statutes 2002, section 260B.176, subdivision 2. See also 42 U.S.C.A. section 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if the prosecuting attorney has filed a charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. Del. P. 5.04 subd 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in a juvenile facility in accordance with Minn. R. Juv. Del. P. 5.02 subd 3. Id. See also 42 U.S.C.A. section 5633(a)(14) (1995). The placement options in Minn. R. Juv. Del. P. 5.02 subd 4 are not referenced in Minn. R. Juv. Del. P. 5.04 subd 3(A) and (B) because the placement limitations in Minnesota Statutes, section 260B.181, subdivisions 2 and 3, preclude the initial detention of juvenile petty offenders in an adult jail or municipal lockup.

Minn. R. Juv. Del. P. 5.04 subd 4 is based upon Minn. R. Crim. P. 4.03. Under Minn. R. Juv. Del. P. 5.04 subd 4, if a child arrested without a warrant is not released by law enforcement, court intake, the court, or the prosecuting attorney, then a judge or judicial officer must make a probable cause determination without unnecessary delay and in any event within forty-eight (48) hours from the time of the arrest including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or if there is no determination as to probable cause within the time as provided by this rule, the person shall be released immediately. County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), requires a prompt judicial determination of probable cause following a warrantless arrest. That determination must occur without unreasonable delay and in no event later than forty-eight (48) hours after the arrest. There are no exclusions in computing the forty-eight-hour time limit. Even a probable cause determination within forty-eight (48) hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual or delay for delay's sake." County of Riverside v. McLaughlin, 500 U.S. 44, 64, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Minn. R. Juv. Del. P. 5.04 subd 4 are in addition to the requirement that a child arrested without a warrant must receive a detention hearing within thirty-six (36) hours after the arrest, exclusive of Saturdays, Sundays, and legal holidays. Because of the exclusion permitted in computing time under the "36-hour rule," compliance with that rule will not necessarily assure compliance with the "48-hour rule." The "48-hour rule" also applies to all misdemeanor cases.

Minn. R. Juv. Del. P. 5.05 subd 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing. If a specific attorney has been assigned to represent the child, that attorney should receive notice. In jurisdictions where public defenders rotate, notice to the chief public defender would be sufficient. Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel. The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child.

Minn. R. Juv. Del. P. 5.06 subd 1 implements the provision of Minnesota Statutes 2002, section 299C.10, which requires peace officers to take the fingerprints and photograph of a child taken

into custody according to the laws of arrest, pursuant to Minnesota Statutes 2002, section 260B.175, subdivision 1, paragraph (b). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minnesota Statutes 2002, section 260B.171, subdivision 5, paragraph (c). Minn. R. Juv. Del. P. 5.06 subd 2 implements the provisions of Minnesota Statutes 2002, section 299C.10, which requires law enforcement personnel to take the fingerprints of all juveniles arrested or charged with felony- or gross misdemeanor-level offenses.

Minn. R. Juv. Del. P. 5.06 subd 3 implements the policies of U.S. v. Wade, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by Kirby v. Illinois, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a line up, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. Blue v. State, 558 P.2d 636 (Alaska 1977); People v. Jackson, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974); Commonwealth v. Richman, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up, and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a Miranda right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be present within reasonable time, such existent circumstances will justify proceeding without counsel. People v. Bustamante, 30 Cal. 3d 88, 634 P.2d 927 (Cal. 1981).

Minn. R. Juv. Del. P. 5.07 implements Minnesota Statutes 2002, section 629.725, by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes 2002, section 629.725. "Crime of violence" has the meaning given it in Minnesota Statutes 2002, section 624.712, subdivision 5, and also includes Minnesota Statutes 2002, section 609.21, gross misdemeanor violations of Minnesota Statutes 2002, section 609.224, and nonfelony violations of Minnesota Statutes 2002, sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749. Id.

Rule 6. Charging Document

6.01 Generally

A charging document is a petition or a citation, and includes charging documents filed in paper form, or charging documents or data filed by electronic means authorized by the State Court Administrator.

(Amended effective December 1, 2012; amended effective July 1, 2015.)

6.02 Citation

Subdivision 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes, section 260B.007, subdivision 16, delinquency misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes, chapter 169A, may be charged by citation. Before entering a plea of guilty or not guilty to alleged misdemeanor or gross misdemeanor charge(s), the child

may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

Subd. 2. Filing. Before a citation may be filed with the court, it shall be screened by the prosecuting attorney for diversion eligibility. A citation must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a citation may be filed in a paper form approved by the State Court Administrator. Filing a citation gives the juvenile court jurisdiction over the matter.

Subd. 3. Contents of Citation. Citations shall contain:

(A) the name, address, and date of birth of the child;

(B) the name and address of the parent, legal guardian or legal custodian of the child;

(C) the offense charged and a reference to the statute or local ordinance which is the basis for the charge;

(D) the time and place and county of the alleged offense;

(E) a designation of the case as a delinquency, a juvenile petty offense, or a juvenile traffic offense; and

(F) other administrative information published by the State Court Administrator.

Subd. 4. Notice of Court Appearance. When a citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by Rule 25.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective December 1, 2012; amended effective July 1, 2015.)

6.03 Petition

Subdivision 1. Generally. A child alleged to be delinquent because of a felony or gross misdemeanor offense (except gross misdemeanors under Minnesota Statutes, chapter 169A, which may be charged by citation) shall be charged by petition. A child alleged to be delinquent because of a misdemeanor offense may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.

Subd. 2. Filing. Each petition shall be signed by the prosecuting attorney before it is filed with the court. The signature of the prosecuting attorney shall be an acknowledgment that the form of the petition is approved and that reasonable grounds exist to support the petition. A delinquency petition may be filed without the prosecutor's signature if the prosecutor is unavailable and a judge determines that filing and the issuance of process should not be delayed. A petition must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a petition may be filed in paper form. Electronic signature of petitions is governed by Minnesota Rules of Criminal Procedure, section 1.06, subdivision 3.

Subd. 3. Contents of the Delinquency Petition. Every petition alleging a child is delinquent shall contain:

(A) a concise statement alleging the child is delinquent;

(B) a description of the alleged offense and reference to the statute or ordinance which was violated;

(C) the name, date of birth, and address of the child;

(D) the names and addresses of the child's parent(s), legal guardian, legal custodian, or nearest known relative;

(E) the name and address of the child's spouse; and

(F) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

Subd. 4. Separate Counts. A petition may allege separate counts, whether the alleged delinquent acts arise out of the same or separate behavioral incidents.

Subd. 5. Contents of Petition Alleging Juvenile Petty Offender or Juvenile Traffic Offender. Every petition alleging a child is a juvenile petty offender or alleging a child is a juvenile traffic offender shall contain:

(A) a concise statement alleging that the child is a juvenile petty offender or a juvenile traffic offender;

(B) the name, address, date of birth, and for juvenile traffic offenders, the driver's license number of the child, if known;

(C) the name and address of the parent(s), legal guardian, or legal custodian of the child;

(D) a description of the offense charged and reference to the statute or ordinance which is the basis for the charge;

(E) the date, county, and place of the alleged offense; and

(F) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective July 1, 2015.)

6.04 Amendment

Subdivision 1. Permissive. A charging document may be amended by order of the court at any time:

(A) before the introduction of evidence at the trial by motion of the prosecuting attorney; or

(B) after the commencement of the trial with consent of the child and prosecuting attorney; or

(C) after trial but before a finding that the allegations of the charging document have been proved, upon motion of the prosecuting attorney, if no additional or different offense is alleged and if substantial rights of the child are not prejudiced.

Amendments shall be granted liberally in the interest of justice and the welfare of the child. If the court orders a charging document amended, additional time may be granted to the child or prosecuting attorney to adequately prepare for and ensure a full and fair hearing.

Subd. 2. Prohibited.

(A) A charging document alleging a child is delinquent shall not be amended to allege a child is in need of protection or services.

(B) A charging document alleging a juvenile petty or traffic offense shall not be amended to allege the child is delinquent.

(C) A petition alleging that a child is in need of protection or services shall not be amended to allege a delinquency, juvenile petty offense or juvenile traffic offense.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015.)

6.05 Probable Cause

Subdivision 1. Establishing Probable Cause. The facts establishing probable cause may be set forth in writing in the charging document. No police reports or other supporting documents may be attached to the charging document at the time of filing to establish probable cause. Probable cause may also be established by subsequently filed police reports, sworn affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn testimony presented to the court. If police reports are subsequently filed in support of the charging document to establish probable cause, the child shall have the right to demand a statement establishing probable cause with specificity. Once demanded, the prosecuting attorney shall have ten (10) days to file with the court and serve on opposing counsel, the specific statement of probable cause. If testimony is presented, a verbatim record of the proceedings shall be made and a transcript of the proceedings prepared and filed with the court.

Subd. 2. When Required. There must be a finding of probable cause:

(A) before the court may issue a warrant pursuant to Rule 4;

(B) before a detention hearing is held for a child taken into custody without a warrant;

(C) within ten (10) days of a court order directing the prosecuting attorney to establish probable cause on the charge(s) alleged in a charging document. The court for any reason may order the prosecutor to show probable cause and the court shall order the prosecutor to show probable cause on demand of the child; or

(D) when competency of the child has been challenged.

Subd. 3. Motion to Dismiss for Lack of Probable Cause. The child may bring a motion to dismiss the charging document for lack of probable cause. The probable cause determination is governed by the procedure set out in Minn. R. Crim. P. 11.04.

Subd. 4. Dismissal. The court shall dismiss a charging document when a showing of probable cause has not been made. A dismissal for failure to show probable cause shall not prohibit the filing of a new charging document and further proceedings on the new charging document.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12

o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

6.06 Procedure on Filing a Charging Document With the Court

Subdivision 1. Dismissal. The court shall dismiss a charging document if it does not allege an act of delinquency as defined by Minnesota Statutes, section 260B.007, subdivision 6, a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16, or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225.

Subd. 2. Arraignment. When a charging document is filed, the court administrator shall promptly schedule an arraignment on the charging document and send notices pursuant to Rule 25.

Subd. 3. Payment of Citation in Lieu of Court Appearance. When a child is charged by citation with an offense or offenses listed on the Statewide Payables List, the child may enter a plea of guilty before the scheduled arraignment date by paying the fine amount established by the Judicial Council, and any applicable fees and surcharges, and by submitting a Plea and Waiver Form signed or acknowledged by the child and the child's parent.

The Plea and Waiver Form shall advise the child that payment constitutes a plea of guilty and an admission (a) that the child understands the nature of the offense alleged; (b) that the child makes no claim of innocence; (c) that the child's conduct constitutes the offense(s) to which the child is pleading guilty; (d) that the plea is made freely, under no threats or promises, and (e) that the child has the following rights which the child voluntarily waives:

(1) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(2) the right to trial;

(3) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;

(4) the right to remain silent;

(5) the right to testify on the child's own behalf;

(6) the right to confront witnesses against oneself;

(7) the right to subpoena witnesses;

The Plea and Waiver Form shall also advise the child that mandatory disposition requirements for a third or subsequent offense may require an appearance in court and may result in the imposition of certain dispositions including, but not limited to, those provided in Minnesota Statutes, section 260B.235, subdivision 6.

The Plea and Waiver Form shall be developed and maintained by the State Court Administrator.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2011.)

6.07 Dismissal by Prosecuting Attorney

The prosecuting attorney may in writing or on the record, stating the reasons therefor, dismiss a petition or citation without leave of court and an indictment with leave of court.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

6.08 Dismissal by Court

If there is unnecessary delay by the prosecution in bringing a respondent to trial, the court may dismiss the petition, citation or indictment.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

Comment--Rule 6

Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, the law was amended to permit tab charges and citations for these offenses to get cases to court more promptly. In 2015, all references to tab charges were removed from the rules to eliminate tab charges as a valid method of charging in juvenile cases.

Minn. R. Juv. Del. P. 6.06 subd 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court.

Minn. R. Juv. Del. P. 6.03 subd 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes 2002, section 260B.141, subdivision 1, provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court.

Minn. R. Juv. Del. P. 6.03 subds 3 and 5 set forth the necessary contents of the petition. A sample petition form as well as a listing of the administrative content approved by the Juvenile Delinquency Rules Committee have been published by the State Court Administrator on the Minnesota Judicial Branch Web site. The reference to the Minnesota Offense Code was removed from this rule in 2015 in recognition of the possible transition away from the use of MOC codes and to another coding system that will serve the same purpose. Although the reference to the MOC codes was removed from the rules, the MOC code is still required as part of the "other administrative information" that was approved by the committee and published by the State Court Administrator. Any changes regarding what is required for coding purposes will be addressed in that document.

The references to citations filed by electronic means are intended to recognize that in some counties law enforcement has already begun to electronically file citations in juvenile cases. It is understood that electronic filing of tab charges and citations and petitions is not available statewide at this time. The rule authorizes and requires electronic filing in the locations where the technology is available, and anticipates the expansion of the practice in other locations as facilitated by State Court Administration. Juvenile citations filed in paper form currently vary statewide. It is anticipated that a statewide standard will be created for use in juvenile cases, in consultation with justice agency partners, which will either be similar to or a modification to the current adult standard commonly referred to as the Statewide Standard Citation. When a statewide standard for juvenile citations is created, it will be published on the Minnesota Judicial Branch Statewide Standard Citation website and communicated statewide. Once the juvenile standard citation is available, its use will be mandatory in juvenile cases.

Rule 7. Arraignment

7.01 Application

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by Rule 17.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

7.02 Generally

Arraignment is a hearing at which the child shall enter a plea in the manner provided in Rule 8.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

7.03 Timing

Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25.

Subdivision 1. Child in Custody. The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

7.04 Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing, the court shall on the record:

(A) verify the name, age, and residence of the child who is charged;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;

(D) determine whether the child is either represented by counsel or waives counsel in the manner provided by Rule 3;

(E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

(F) explain to the child and the child's parent(s), legal guardian or legal custodian, if present, the child's right to remain silent in this and subsequent appearances before the court; and

(G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to Rule 3.03.

Subd. 2. Reading of Allegations of Charging Document. Unless waived by the child, the court shall read the allegations of the charging document to the child and determine that the child understands them, and if not, provide an explanation.

Subd. 3. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of charges made, and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges stated in the charging document. A challenge on probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 4. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring that the child plead guilty or not guilty to charges stated in the charging document.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

Comment--Rule 7

Minn. R. Juv. Del. P. 7.04 subd 1(G) and Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn. R. Crim. P. 17.03 subd 5.

Rule 8. Pleas

8.01 Application

Subdivision 1. Juvenile Petty and Traffic Proceedings. Pleas in juvenile petty or juvenile traffic proceedings are governed by Rule 17.06.

Subd. 2. Extended Jurisdiction Juvenile Proceedings. Pleas in extended jurisdiction juvenile proceedings are governed by Rule 19.10, subdivision 5, and Minn. R. Crim. P. 15.

Subd. 3. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to enter a plea until the court determines that the child is competent.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

8.02 Generally

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with Rules 9 through 16. If the child remains silent when confronted with charges, or if the court refuses to accept a guilty plea by the child, the court shall proceed in the same manner as if the child pled not guilty.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

8.03 Plea of Not Guilty Without Appearance

Except when the child is in detention, the court may permit a written plea of not guilty or a plea of not guilty on the record to be entered by child's counsel without the personal appearance of the

child, child's parent(s), legal guardian or legal custodian or their counsel. The child's counsel shall immediately furnish a copy of the written plea of not guilty to the prosecuting attorney.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective December 1, 2012; amended effective July 1, 2015).

8.04 Plea of Guilty

Subdivision 1. Waiver of Right to Trial. The court shall not accept a child's plea of guilty until first determining, the following, under the totality of the circumstances, and based on the child's statements, whether on the record or contained in a written document signed by the child and the child's counsel:

(A) *Charges in Charging Document; Factual Basis for Plea.* That the child understands the charges stated in the charging document, and the essential elements of each charge, and that there is a factual basis for the guilty plea;

(B) *Right to Trial.* That the child understands the child's right to have a trial, that is, to require proof of all elements of each offense stated in the charging document, and that this includes an understanding of the following related rights:

(1) the right to be presumed innocent of each charge until and unless the petitioner succeeds in proving beyond a reasonable doubt that the child is guilty;

(2) the right to remain silent during trial proceedings if the child wishes and the right of the child to testify on the child's own behalf if the child wants to;

(3) the right to call witnesses to testify on the child's behalf, including the right to use court subpoenas to require that witnesses for the child attend the trial; and

(4) the right to hear the testimony of all witnesses called by the prosecuting attorney, and to cross-examine these witnesses;

(C) *Dispositions.* That the child understands the powers of the court to make a disposition if the court finds that the allegations in the charging document are proved, including the child's understanding that:

(1) the court's powers range up to the most severe step of placing custody of the child in an institution;

(2) the court's disposition could be for a duration ranging upward to the time the child attains age 19;

(3) the court can modify an initial disposition, even repeatedly, for a term ranging up to the time the child attains age 19; and

(4) the child understands the potential future consequences if the court finds that the allegations in the charging document are proved, including the child's understanding of:

(a) the effect of the finding on sentencing of the child if the child, when an adult, is convicted of an adult offense; and

(b) the effect of the finding in the event the child commits any further offenses while a juvenile, including the prospects for certification of the child for an adult court prosecution or for prosecution in juvenile court as an extended jurisdiction juvenile;

(D) *Right to Counsel.* If a child charged with a misdemeanor in a delinquency matter remains without counsel or with only standby counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on the child's rights and on the choice to plead guilty or not guilty to the offense(s) in the charging document; and

(2) could assist the child during a trial, to protect all rights of the child that arise in the course of a trial;

(E) *Free Choice.* That any plea of guilty is made freely, and that no one has made either threats or promises to the child to encourage a plea of guilty other than those that the parties have disclosed to the court; and

(F) *No Claim of Innocence.* That the child is not making any claim of innocence.

Subd. 2. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, if it is fair and just to do so, giving due consideration to the reasons the child gives and any prejudice that withdrawal of the plea would cause because of actions taken in reliance on the child's plea; or

(B) at any time, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 3. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and the approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of lesser degree, or

(B) a plea of guilty to a different offense than alleged in the original charging document.

A plea of guilty to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the charging document. If a plea to a different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 4. Acceptance or Nonacceptance of Plea of Guilty. The court shall make a finding within fifteen (15) days of a plea of guilty:

(A) that the plea has been accepted and allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

Subd. 5. Future Proceedings. If the court accepts a plea of guilty and makes a finding that the allegations in the charging document are proved, the court shall schedule further proceedings pursuant to Rules 14 and 15.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective July 1, 2015.)

Comment--Rule 8

It is also desirable that the child be asked to acknowledge by signing the plea petition that the child has read the questions set forth in the petition or that they have been read to the child; that the child understands them; that the child gave the answers set forth in the petition; and that they are true. Suggested forms of the plea petition are appended to the rules.

Rule 9. Settlement Discussions and Plea Agreements

9.01 Generally

In cases in which it appears that it would serve the interests of the public in the effective administration of juvenile justice under the principles set forth in this rule, the prosecuting attorney may engage in settlement discussions for the purposes of reaching a settlement agreement. If the child is represented, the prosecuting attorney shall engage in settlement discussions only through the child's counsel.

9.02 Relationship Between the Child and the Child's Counsel

The child's counsel shall conclude a settlement agreement only with the consent of the child and shall ensure that the decision to enter a guilty plea is ultimately made by the child.

9.03 Disclosure of Settlement Agreement

If a settlement agreement has been reached which contemplates a guilty plea, the court shall require the disclosure of the agreement and the reasons for it before the plea. The court shall reject or accept the plea on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-disposition report. If the court rejects the settlement agreement, it shall advise the parties in open court and then ask the child to either affirm or withdraw the plea.

9.04 Settlement Discussions and Agreements Not Admissible

If the child enters a guilty plea which is not accepted or which is withdrawn, neither the settlement discussions, nor the settlement agreement, nor the plea shall be received in evidence against or in favor of the child in any subsequent proceeding against the child.

Rule 10. Discovery

10.01 Scope and Application

Rule 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to Rule 17.07, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

10.02 Evidence and Identification Disclosure

The prosecuting attorney shall advise the child's counsel in writing of:

(A) any evidence against the child obtained as a result of a search, seizure, wiretapping or any form of electronic or mechanical eavesdropping;

(B) any confessions, admissions, or statements in the nature of confessions made by the child;

(C) any evidence against the child discovered as a result of confessions, admissions or statements in the nature of confessions made by the child; and

(D) any identification procedures involving the child, including but not limited to line-ups or other observations of the child and the exhibition of photographs of the child.

The notice required by this rule shall be provided by the prosecutor within five (5) days of a not guilty plea by the child. If child's counsel makes a demand for disclosure pursuant to this rule, the disclosures shall be provided within five (5) days of the demand. Evidence which becomes known to the prosecutor after the deadlines for disclosure provided here, shall immediately be disclosed to child's counsel.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

10.03 Notice of Additional Offenses

The prosecuting attorney shall advise child's counsel of evidence of any additional offenses that may be offered at the trial under any exclusionary rule exceptions. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial. The notice need not include offenses for which the child has been previously prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or omnibus hearing or as soon after those hearings as the offenses become known to the prosecutor. If there is no pretrial or omnibus hearing, the notice shall be given at least seven (7) days before the trial.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

10.04 Disclosure by Prosecuting Attorney

Subdivision 1. Disclosure by Prosecuting Attorney Without Order of Court. After a charging document is filed, if the child's counsel makes a request, the prosecuting attorney shall make the following disclosures within five (5) days of the receipt of the request:

(A) *Trial Witnesses.* The prosecuting attorney shall disclose to the child's counsel the names and addresses of the persons the prosecuting attorney intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, together with their prior record of adult convictions, any prior record of allegations of delinquency which have been proved and any prior delinquency adjudications within the actual knowledge of the prosecuting attorney. The prosecuting attorney shall permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the prosecuting attorney or agents of the prosecuting attorney within the knowledge of the prosecuting attorney.

(B) *Statements of Child and Accomplices.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any relevant written or recorded statements made by the child and accomplices within the possession or control of the prosecuting attorney, the existence of which is known by the prosecuting attorney, and shall provide the child's counsel with the substance of any oral statements made by the child and accomplices which the prosecuting attorney intends to offer in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing.

(C) *Documents and Tangible Objects.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy books, papers, documents, photographs and tangible objects that the prosecutor intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, or which were obtained from or belong to the child and which the prosecuting attorney intends to offer as evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the prosecuting attorney intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the prosecuting attorney shall permit the child's counsel to inspect and photograph such buildings or places.

(D) *Reports of Examinations and Tests.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made which are relevant to the case.

(E) *Record of the Child.* The prosecuting attorney shall inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of delinquency of the child within the possession or control of the prosecuting attorney.

(F) *Special Education and School Disciplinary Records.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration in charging.

(G) *Exculpatory Information.* The prosecuting attorney shall disclose to the child's counsel any material or information within the possession and control of the prosecuting attorney that tends to disprove the allegation(s).

(H) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Subd. 2. Disclosure Upon Order of Court. Upon motion of the child's counsel, the court at any time before trial may require the prosecuting attorney to disclose to the child's counsel any information requested that is relevant to guilt, innocence or culpability of the child. If the motion is denied, the court upon application of the child shall inspect and preserve any relevant information.

Subd. 3. Information Not Subject to Disclosure by Prosecuting Attorney.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's staff or officials or agents of the prosecuting attorney participating in the matter are not subject to disclosure.

(B) *Reports.* Except as provided in Rule 10.04, subdivision 1(C)-(G), reports, memoranda or internal documents made by the prosecuting attorney or members of the prosecuting attorney's staff or by agents of the prosecuting attorney in connection with the matter are not subject to disclosure.

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate.* The information relative to the witnesses and persons described in Rule 10.04, subdivision 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical

harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

10.05 Disclosure by Child

Subdivision 1. Information Subject to Disclosure Without Order of Court. After a charging document is filed, if the prosecuting attorney makes a request, the child's counsel shall make the following disclosures within five (5) days of the receipt of the request.

(A) *Documents and Tangible Objects.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy books, papers, documents, photographs and tangible objects which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the child's counsel intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the child's counsel shall permit the prosecuting attorney to inspect and photograph such buildings or places.

(B) *Reports of Examinations and Tests.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing when the results or reports relate to the testimony of the witness.

(C) *Notice of Defense, Witnesses for the Child and Record.*

(1) Notice of Defenses. The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes, section 609.035, or intoxication. Notice of a defense of mental illness or cognitive impairment is governed by Rule 20.02, subdivision 1.

(2) Witnesses for the Child. The child's counsel shall provide the prosecuting attorney with the names and addresses of persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

(3) Statements of Witnesses for the Child. The child's counsel shall permit the prosecuting attorney to inspect and copy any relevant written or recorded statements of the persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing and which are within the possession or control of the child's counsel and shall permit the prosecuting attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

(4) Alibi. If the child intends to offer evidence of an alibi, the child's counsel shall also inform the prosecuting attorney of the specific place or places where the child contends the child

was when the alleged delinquent act occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses the child intends to call at the trial in support of the alibi.

(5) Record. The child's counsel shall inform the prosecuting attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency of the child. A child shall not be required to reveal prior offenses which might result in enhancement of pending enhanceable offenses.

Subd. 2. Disclosure Upon Order of Court.

(A) *Disclosure Procedures With Child.* Upon motion of the prosecuting attorney and a showing that one or more of the following procedures will be material in determining whether the child committed the alleged act or should be certified or is an extended jurisdiction juvenile, the court at any time before a hearing may, subject to constitutional limitations, order the child to:

(1) appear in a line-up;

(2) speak for identification by witnesses to an offense or for the purpose of taking voice prints;

(3) be fingerprinted or permit palm prints or footprints to be taken;

(4) permit measurements of the child's body to be taken;

(5) pose for photographs not involving re-enactment of a scene;

(6) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion;

(7) provide specimens of handwriting; or

(8) submit to reasonable physical or medical inspection of the child's body.

(B) *Notice of Time and Place of Discovery Procedures With Child.* Whenever the personal appearance of the child is required for procedures ordered pursuant to Rule 10.05, subdivision 2(A), the prosecuting attorney shall inform the child's counsel of the time and place of the procedure.

(C) *Medical Supervision.* Blood tests shall be conducted under medical supervision and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the child's counsel, the court may order the child's appearance delayed for a reasonable time or may order that tests take place at the child's residence or some other convenient place.

(D) *Notice of Results.* The prosecuting attorney shall make available to the child's counsel the results of the procedures provided by Rule 10.05, subdivision 2(A) within five (5) days from the date the results become known to the prosecuting attorney, unless otherwise ordered by the court.

Subd. 3. Information Not Subject to Disclosure by Child.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or counsel's agents participating in the representation of the child are not subject to disclosure.

(B) *Reports.* Except as provided by Rule 10.05, subdivision 1(A) and (B) and (C)(2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of

counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective September 1, 2018.)

10.06 Regulation of Discovery

Subdivision 1. Investigations Not to be Impeded.

(A) *Prosecuting Attorney.* The prosecuting attorney or agents for the prosecuting attorney shall not advise persons having relevant material or information to refrain from discussing the case with the child's counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede investigation of the case by the child's counsel.

(B) *Child, Child's Counsel, or Agents for Child's Counsel.* The child, child's counsel, or agents for the child or child's counsel shall not advise persons having relevant material or information to refrain from discussing the case with opposing counsel or their agents or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case except the child's counsel may:

(1) advise the child that the child need not talk to anyone, and

(2) advise the child's parent(s), legal guardian, and legal custodian that they may refrain from discussing any relevant material or information obtained as a result of privileged communication between the child and the child's counsel.

Subd. 2. Continuing Duty to Disclose. If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, counsel shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses. The prosecuting attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3. Time, Place and Manner of Discovery and Inspection. An order of the court permitting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4. Custody of Materials. Any materials furnished to the prosecuting attorney or the child's counsel under discovery rules or court orders shall remain in the custody of the prosecuting attorney or the child's counsel and shall be used only for the pending case and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5. Protective Orders. Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the prosecuting attorney or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

Subd. 6. Excision. If only a portion of materials are discoverable under these rules, that portion shall be disclosed. If material is excised pursuant to judicial order, it shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

Subd. 7. Sanctions.

(A) *Continuance or Order.* If at any time it is brought to the attention of the court that the prosecuting attorney, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(B) *Contempt.* Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 8. Expense. If the child or the parent(s) of the child cannot afford the costs of discovery, these costs will be at public expense in whole or in part depending on the ability of the child or the parent(s) of the child to pay.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

10.07 Taking Depositions

Subdivision 1. Deposition of Unavailable Witness. Upon motion, the court may order the deposition of a prospective witness when there is a reasonable probability the testimony of the witness will be used at a trial or hearing and:

(A) there is a reasonable probability the witness will be unable to be present or to testify at the trial or hearing because of the witness' physical or mental illness, infirmity, or death; or

(B) the person requesting the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or

(C) there is a stipulation by counsel; or

(D) there is another reason accepted by the court.

Subd. 2. Procedure. The court may order that the deposition be taken orally before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present when the deposition is being taken.

(A) *Oral Deposition.* Depositions shall be taken upon oral examination.

(B) *Oath and Record.* The witness shall be put under oath and a verbatim record of the testimony shall be made in the manner directed by the court. In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If this order is made, the prosecuting attorney or the child's counsel may nevertheless arrange to have a stenographic transcription made at their own expense.

(C) *Scope and Manner of Examination--Objections, Motion to Terminate.*

(1) Consent Required. In no event shall the deposition of a child who is charged with an offense be taken without the child's consent.

(2) Scope and Manner of Taking. The scope and manner of examination and cross-examination in the taking of a deposition to be used at trial shall be the same as that allowed at the trial. The scope and manner of examination and cross-examination in the taking of a deposition to be used at a certification or extended jurisdiction juvenile hearing shall be the same as would be allowed at a certification or extended jurisdiction juvenile hearing.

(3) Objections. All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of any person present at the depositions and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections unless the objection is based on the witness's use of the Fifth Amendment.

(4) Limitation upon Motion. At any time, on motion of the child's counsel or the prosecuting attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and the issues.

At any time during the taking of the deposition, on motion of the child's counsel or the prosecuting attorney, or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to annoy, embarrass or oppress the deponent, the child, the child's counsel or prosecuting attorney or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

(A) that certain matters not be inquired into or that the scope of examination be limited to certain matters, or

(B) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the child's counsel, the prosecuting attorney or the deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

Subd. 3. Transcription, Certification, and Filing. When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. That person shall then secure the deposition, noting the title of the case and "Deposition of (here insert name of witness)" and shall promptly file it under seal with the court in which the case is pending. The deposition must not be unsealed or disclosed except by court order. Upon the request of the child's counsel or the prosecuting attorney, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by the child's counsel and the prosecuting attorney. The person taking the deposition shall mark the exhibits, and after giving opposing counsel an opportunity to inspect and copy them, return the exhibits to the person producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Subd. 4. Failure to Appear. Failure of the child to appear after notice is given will not prohibit the deposition from being taken.

Subd. 5. Expense of Depositions. If the child or the parent(s) of the child cannot afford the costs of depositions, these costs shall be paid at public expense in whole or in part, depending on the ability of the child or the parent(s) of the child to pay.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

Comment--Rule 10

Minn. R. Juv. Del. P. 10.02 is modeled after the Minn. R. Crim. P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules.

Minn. R. Juv. Del. P. 10.03 is modeled after Minn. R. Crim. P. 7.02 and would encompass the commonly referred to Spreigl notice derived from State v. Spreigl, 139 N.W.2d 167 (1965).

Minn. R. Juv. Del. P. 10.05 subd 1(C)(5) provides that a child is not required to reveal prior offenses which might result in enhancement of pending enhanceable offenses. An example of an "enhanceable offense" is a pending misdemeanor fifth degree assault which could be amended to a gross misdemeanor under Minnesota Statutes 2002, section 609.224, subdivision 2, if the prosecutor knew, for instance, of the child's prior adjudication for misdemeanor assault against the same victim in another county.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 11. Pretrial Conference

11.01 Timing

The court, in its discretion or upon motion of the child's counsel or the prosecuting attorney, may order a pretrial conference. Where there has been no pretrial conference, pretrial issues and motions shall be heard immediately before trial unless the court orders otherwise for good cause.

11.02 Evidentiary and Other Issues

At the pretrial conference, the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to Rule 12. If there is no pretrial conference, constitutional or evidentiary issues shall be raised by written motion of the child's counsel or prosecuting attorney, and the court shall schedule an omnibus hearing. The written motion must specifically set forth the issues raised.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 11

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 12. Omnibus Hearing

12.01 Scheduling of Omnibus Hearing

The court shall hold an omnibus hearing pursuant to Minn. R. Crim. P. 11 any time before trial to determine issues raised pursuant to Rule 6, 10 or 11 upon its own motion or upon motion of the child's counsel or the prosecuting attorney.

Where new information, evidence, or issues arise during trial, the court may consider these issues at trial. Any issue not determined prior to trial shall be determined as part of the trial.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

12.02 Scheduling of Trial

If a demand for speedy trial is made, the omnibus hearing shall not extend the time for trial unless the court finds good cause for continuance of the trial date.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 12

When the same judge is assigned to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond the time established by Minn. R. Juv. Del. P. 13.02 are not recommended. However, the child's right to a fair trial will justify a short continuance where the child seeks reassignment of the judge pursuant to Minn. R. Juv. Del. P. 22.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 13. Trials

13.01 Purpose and Application

A trial is a hearing held to determine whether the child is guilty or not guilty of the offenses alleged in the charging document. This rule applies to all delinquency, and juvenile petty and juvenile traffic trials. Extended jurisdiction juvenile trials are governed by Rule 19.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

13.02 Commencement of Trial

Subdivision 1. For a Child in Detention. A trial shall be commenced within thirty (30) days from the date of the demand for a speedy trial unless good cause is shown why the trial should not be commenced within that time.

Subd. 2. For a Child Not in Detention. A trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time.

Subd. 3. Release. If the child is detained and the trial has not commenced within thirty (30) days of the demand and a continuance has not been granted, the child shall be released subject to such nonmonetary release conditions as may be required by the court and the trial shall commence within sixty (60) days of the original demand for a speedy trial.

Subd. 4. Dismissal. Unless there is good cause shown for the delay, the charging document shall be dismissed without prejudice if the trial has not commenced within the time set forth above and the court has not granted a continuance.

Subd. 5. Effect of Mistrial; Order For New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial before a new judge shall

be commenced within fifteen (15) days unless good cause is shown and the court grants a continuance.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

13.03 Trial

Subdivision 1. Initial Procedure. At the beginning of the trial, if the court has not previously determined the following information at a prior hearing, the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;

(B) determine whether all necessary persons are present and identify those present for the record; and

(C) determine whether notice requirements have been met and if not whether the affected persons waive notice.

Subd. 2. Order of Trial. The order of the trial shall be as follows:

(A) the prosecuting attorney may make an opening statement, confining the statement to the facts that it expects to prove;

(B) the child's counsel may make an opening statement, after the prosecutor's opening statement or may reserve the opening statement until immediately before offering the defense evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved;

(C) the prosecuting attorney shall offer evidence in support of the charging document;

(D) the child's counsel may offer evidence in defense of the child;

(E) the child's counsel and the prosecuting attorney shall have the right to cross-examine witnesses;

(F) the prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney rebuttal evidence. In the interests of justice the court may permit either the prosecuting attorney or the child's counsel to offer evidence upon the original case;

(G) at the conclusion of the evidence, the prosecuting attorney may make a closing argument; and

(H) the child's counsel may make a closing argument.

Subd. 3. Trial on Stipulated Facts. By agreement of the child and the prosecuting attorney, a determination of the child's guilt may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the child shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the child's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the child in court. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as in any other trial pursuant to Rule 13.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

13.04 Evidence

The court shall admit only such evidence as would be admissible in a criminal trial.

13.05 Use of Depositions at Trial

Subdivision 1. Unavailability of Witness. At a trial or hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if:

(A) the witness is dead or unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity; or

(B) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or

(C) there is a stipulation by counsel; or

(D) for any other reason accepted by the court.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the person offering the deposition, unless part of the deposition has previously been offered by another party.

Subd. 2. Inconsistent Testimony. Any deposition may be used by the child's counsel or the prosecuting attorney for the purpose of contradicting or impeaching the testimony of the deponent when they appear as a witness.

Subd. 3. Substantive Evidence. A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence, if the witness refuses to testify despite an order of the court to do so or if the witness gives testimony at the trial or hearing which is inconsistent with the deposition.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

13.06 Standard of Proof

The allegations in the charging document must be proved beyond a reasonable doubt.

13.07 Joint Trials

Subdivision 1. Generally. When two or more children are jointly charged with any offense, they may be tried separately or jointly in the discretion of the court. Where the offense is a felony, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to each child, and the interests of justice before ordering a joint trial. A child in a joint trial shall be found guilty or not guilty in the same manner as a child tried separately.

Subd. 2. Severance Because of Improper Joinder. Where a child was improperly joined in a proceeding, the court shall order severance upon motion of the prosecuting attorney or the child's counsel. Improper joinder is not a ground for dismissal.

Subd. 3. Severance Because of Another Child's Out-of-Court Statement. Where one child's out-of-court statement refers to, but is not admissible against another child and those children may otherwise be tried jointly, the child against whom the statement is not admissible may move for severance. If the prosecuting attorney intends to offer the statement as evidence in its case in chief, the court shall require the prosecuting attorney to elect one of the following options:

(A) a joint trial at which the statement is not received in evidence;

(B) a joint trial at which the statement is received in evidence only after all references to the child making the motion have been deleted, if admission of the statement with the deletions will not prejudice that child; or

(C) severance.

Subd. 4. Severance During Trial. If the court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the children in a joint trial, the court shall order severance upon a finding of manifest necessity or with the consent of the child to be tried separately.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

13.08 Joinder and Severance of Offenses

Subdivision 1. Joinder of Offenses. When the child's conduct constitutes more than one offense, each such offense may be charged in the same charging document in a separate count. The court, upon the prosecuting attorney's motion, may order joinder of offenses if the offenses could have been but were not joined in a single charging document. In extended jurisdiction juvenile cases, the child has the same right as an adult to sever offenses for separate trial on each offense.

Subd. 2. Severance of Offenses. On motion of the prosecuting attorney or the child's counsel, the court shall sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the child's guilt or innocence of each offense or charge; or

(c) during trial, with the child's consent or upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the child's guilt or innocence of each offense or charge. Misjoinder of offenses is not a ground for dismissal.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

13.09 Findings

Within seven (7) days of the conclusion of the trial, the court shall make a general finding that the allegations in the charging document have or have not been proved beyond a reasonable doubt. The court shall dismiss the charging document if the allegations have not been proved. An order finding that the allegations of the charging document have been proved shall state the child's name and date of birth; and the date and county where the offense was committed. Within fifteen (15) days of the conclusion of the trial, the court shall in addition specifically find the essential facts that support a general finding that the allegations in the charging document have been proved beyond a reasonable doubt in writing. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein. If the court omits a finding on any issue of fact essential to sustain the general finding, it shall be deemed to have made a finding consistent with the general finding. Findings may be made on the record, but must be reduced to writing within the fifteen (15) days required herein.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

13.10 Further Proceedings

If the court makes a finding that the allegations of the charging document have been proved, the court shall hold dispositional proceedings pursuant to Rule 15.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 13

For children held in detention, Minn. R. Juv. Del. P. 13.02 subd 1 requires that a trial be commenced within thirty (30) days from the date of the speedy trial demand unless good cause is shown why the trial should not be held within that time. If the trial has not commenced within the thirty (30) days and a continuance has not been granted upon a showing of good cause, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.

For children not held in detention, Minn. R. Juv. Del. P. 13.02 subd 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or the child's counsel or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re Welfare of G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991); see also State v. Terry, 295 N.W.2d 95 (Minn. 1980).

If the trial is not commenced within sixty (60) days from the date of the demand for a speedy trial and a continuance has not been granted for good cause, the charging document shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); State v. Kasper, 411 N.W.2d 182 (Minn. 1987); State v. Friberg, 435 N.W.2d 509 (Minn. 1989).

Minn. R. Juv. Del. P. 13.07 is modeled after Minn. R. Crim. P. 17.03 subds 2 and 3. Minn. R. Juv. Del. P. 13.08 is modeled after Minn. R. Crim. P. 17.03 subds 1, 3 and 4. Joint trials should be discouraged where one or more of the children is without counsel.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 14. Continuance for Dismissal

14.01 Agreements Permitted

Subdivision 1. Generally. After consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the child's counsel may agree that the juvenile proceeding will be suspended for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in Rule 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance. The agreement shall be on the record or in writing and signed by the prosecuting attorney, the child, and the child's counsel, if any. The agreement shall contain a waiver by the child of the right to a speedy trial under Rule 13.02, subdivisions 1 and 2. The agreement may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified

testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.

Subd. 2. Additional Conditions. Subject to the court's approval after consideration of the victim's views and upon a showing of substantial likelihood that the allegations could be proved and that the benefits to society from rehabilitation outweigh any harm to society from suspending the juvenile proceeding, the agreement may specify one or more of the following additional conditions to be observed by the child during the period of suspension:

(A) that the child not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the allegations are based;

(B) that the child participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;

(C) that the child make restitution in a specified manner for harm or loss caused by the offense alleged;

(D) that the child perform specified community service; and

(E) that the child pay court costs.

Subd. 3. Limitations on Agreements. The agreement may not specify a period of suspension longer than the juvenile court has jurisdiction over the child nor any condition other than that which could be imposed upon probation after a finding that the offenses alleged have been proved.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.02 Court Approval; Filing of Agreement; Release

All agreements made under Rule 14.01 of this rule must be approved by the court on the record or in writing. Promptly after any written agreement is made and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the juvenile proceeding is suspended for a period specified in the statement. Upon court approval of the agreement, the child shall be released from any custody under Rule 5.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.03 Modification of Agreement

Subject to Rules 14.01 and 14.02 and with the court's approval on the record or in writing, the parties, by mutual consent, may modify the terms of the agreement at any time before its termination.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.04 Termination of Agreement; Resumption of Proceedings

Subdivision 1. Upon Notice of Child or Child's Counsel. The agreement is terminated and the juvenile proceeding may resume as if there had been no agreement if the child's counsel serves upon the prosecuting attorney and files a notice with the court that the agreement is terminated.

Subd. 2. Upon Order of Court. The court may order the agreement terminated and the juvenile proceeding resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds that:

(A) the child or child's counsel misrepresented material facts affecting the agreement, if the motion is made within six months after the date of the agreement; or

(B) the child has committed a material violation of the agreement, if the motion is made not later than one month after the expiration of the period of suspension specified in the agreement.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.05 Emergency Order

The court by warrant may direct any officer authorized by law to bring the child forthwith before the court for the hearing of the motion if the court finds from affidavit, written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or testimony that:

(A) there is probable cause to believe the child committed a material violation of the agreement; and

(B) there is a substantial likelihood that the child otherwise will not attend the hearing.

In any case, the court may issue a summons instead of a warrant to secure the appearance of the child at the hearing.

(Amended effective July 1, 2015.)

14.06 Release Status Upon Resumption of Delinquency, Juvenile Petty or Juvenile Traffic Proceedings

If the juvenile proceeding resumes under Rule 14.04, the child shall return to the release status in effect before the juvenile proceeding was suspended unless the court imposes additional or different conditions of release under Rule 5.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.07 Termination of Agreement; Dismissal

If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the charging document shall be dismissed one month after expiration of the period of suspension specified by the agreement. If such a motion is then pending, the agreement is terminated and the charging document shall be dismissed by order of the court upon entry of a final order denying the motion. Following a dismissal under this subdivision no further juvenile proceedings may be brought against the child for the offense involved.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015.)

14.08 Termination and Dismissal Upon Showing of Rehabilitation

The court may order the agreement terminated, dismiss the juvenile proceedings, and bar further juvenile proceedings on the offense involved if, upon motion of a party stating facts supporting the motion and opportunity to be heard, the court finds that the child has committed no later offenses as specified in the agreement and appears to be rehabilitated.

14.09 Modification or Termination and Dismissal Upon Child's Motion

If, upon motion of the child's counsel and hearing, the court finds that the prosecuting attorney obtained the child's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under Rule 10.04, the court may:

(A) order appropriate modification of the terms resulting from the misrepresentation; or

(B) if the court determines that the interests of justice require, order the agreement terminated, dismiss the juvenile proceeding, and bar further juvenile proceedings on the offense involved.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

14.10 Court Authority to Dismiss

Nothing in this rule shall limit the inherent power of the court to continue a case for dismissal even in the absence of an agreement by the prosecutor and child's counsel. In the event the court exercises this power:

(A) The action of the court must be on the record or in writing;

(B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under Rule 13.02, subdivisions 1 and 2;

(C) The continuance shall be on conditions provided in Rule 14.01, subdivisions 1 and 2, and shall be subject to limitations stated in Rule 14.01, subdivision 3;

(D) The terms of the continuance may be modified on the record or in writing, by the court, with notice to all parties; and

(E) Proceedings following the continuance shall be governed by Rules 14.04-14.08.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 14

Pursuant to Minn. R. Juv. Del. P. 1.01, references to "child's counsel" include the child who is proceeding pro se.

The Minnesota Supreme Court's Juvenile Rules Advisory Committee discovered that many juvenile court practitioners did not appreciate the limited benefits of withholding adjudication (now designated "continuance without adjudication") and were inadvertently misrepresenting its benefits to juveniles. See Comment to Minn. R. Juv. Del. P. 15. Many practitioners were, in effect, treating withholding of adjudication as a continuance for dismissal or pretrial diversion, similar to Minn. R. Crim. P. 27.05. In order to avoid future misuse of the continuance without adjudication and allow juvenile court practitioners the benefits of continuance for dismissal, Minn. R. Crim. P. 27.05 was incorporated into the juvenile rules. Because there is no finding that the allegations of the charging document have been proved in a continuance for dismissal, the offense should not count towards a juvenile's future criminal history score under the sentencing guidelines.

All agreements under this rule, including written agreements, must be approved by the court in writing or on the record.

A continuance for dismissal or continuance without adjudication under Minn. R. Juv. Del. P. 15.05 subd 4 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney is required to have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes 2002, section 388.24. With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Minn. R. Juv. Del. P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. Rule 14.10 further provides that the court has the inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. In re Welfare of J.B.A., 581 N.W.2d 37 (Minn. Ct. App. 1998).

Rule 15. Delinquency Disposition

15.01 Generally

Subdivision 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under Rule 8.04 and findings after trial pursuant to Rule 13.09.

Subd. 2. Application. This rule applies to delinquency dispositions. Rule 17 governs dispositions for juvenile petty offenses and juvenile traffic offenses. Rule 19 provides for sentence and disposition in extended jurisdiction juvenile cases.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

15.02 Timing

Subdivision 1. Hearing. After the court makes a general finding that the allegations in the charging document have been proved beyond a reasonable doubt, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time as follows:

(A) for a child not held in detention, within fourty-five (45) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(B) for a child held in detention, within fifteen (15) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(C) in cases involving a transfer of the file under subdivision 4, for a child not held in detention, as early as practicable but within ninety (90) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt.

Subd. 2. Order. The court shall enter a dispositional order pursuant to Rule 15.05 within three (3) days of the disposition hearing. For good cause, the court may extend the time to enter a dispositional order to fifteen (15) days from the disposition hearing.

Subd. 3. Delay. For good cause, the court may extend the time period to conduct a disposition hearing for one additional period of thirty (30) days for a child not held in detention or fifteen (15) days for a child held in detention. Except in extraordinary circumstances, if the court fails to conduct a disposition hearing or enter a dispositional order for a child held in detention within the time limits prescribed by this rule, the child shall be released from detention. If a disposition hearing is not conducted or a dispositional order is not entered within the time limits prescribed by this rule, the court may dismiss the case.

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall order a continuance and direct the court administrator to transfer the file to the juvenile court in the child's home county within five (5) days of the finding that the offense(s) charged have been proved. Venue transfers in juvenile court are governed by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. For convenience of the participants, the court which accepts a plea may determine the disposition for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

15.03 Predisposition Reports

Subdivision 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(A) at any time after the charges in the charging document have been proved; or

(B) with the consent of the child, child's counsel, if any, and the parent(s), legal guardian or legal custodian of the child, before the charges in the charging document have been proved.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section 260B.007, subdivision 6, paragraph (a), clause (1) or (2), have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 15.03, subdivision 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the prosecuting attorney and the child's parent(s), legal guardian or legal custodian and their counsel present in court that a predisposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, the child's counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child. The report shall not be disclosed to the public except by court order.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015.)

15.04 Hearing

Subdivision 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings

shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and the child's counsel, if any, shall appear at all disposition hearings. The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

Subd. 2. Evidence. The court may receive any information, except privileged communication, that is relevant to the disposition of the case including reliable hearsay and opinions. Anyone with the right to participate in the disposition hearing pursuant to Rule 2 may call witnesses, subject to cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to the disposition.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

15.05 Dispositional Order

Subdivision 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 7.

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Subd. 2. Considerations; Findings.

(A) The dispositional order made by the court shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered;

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and

(3) if the disposition changes the place of custody of the child:

(a) the reasons why public safety and the best interest of the child are not served by preserving the child's present custody; and

(b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

(B) When making a disposition, the court shall consider whether a particular disposition will serve established principles of dispositions, including but not limited to:

(1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:

(a) Public Safety. The risk to public safety, taking into account:

(i) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(ii) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(iii) the child's prior record of delinquency;

(iv) the child's programming history, including the child's past willingness to participate meaningfully in available programming; and

(b) Proportionality. The principle that the disposition be proportional, that is, the least restrictive action consistent with the child's circumstances.

(2) Best Interests. A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) Sanctions. Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. In determining whether to order secure placement, the court shall consider the necessity of protecting the public, protecting program residents and staff, and preventing juveniles with histories of absconding from leaving treatment programs. Other factors that may impact on what sanctions are necessary include: any prior adjudication for a felony offense against a person, prior failures to appear in court, or prior incidents of running away from home.

(5) Local Dispositional Criteria. The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes, section 260B.198, subdivision 1, clause (3), shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to Rule 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and not inimical to public safety to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention.* If the child is not being held in detention, the court may continue the case without adjudication for a period not to exceed one hundred eighty (180) days from the date of disposition. The court may extend the continuance for an additional successive period not to exceed one hundred eighty (180) days with the consent of the prosecutor and only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.

(C) *Child in Detention.* If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to Rule 15.03, subdivision 1. The court may extend this continuance and enter an order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance.* During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes, section 260B.198, subdivision 1, except clause (4).

(E) *Adjudication after Continuance.* Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.

(F) *Termination of Jurisdiction.* A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by Rule 15.05, subdivision 4(B) or (C), or juvenile court jurisdiction over the charges terminates.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective December 1, 2012; amended effective July 1, 2015).

15.06 Informal Review

The court shall review all disposition orders, except commitments to the Commissioner of Corrections, at least every six (6) months.

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under Rule 15.08, subdivision 8, the court may commence a modification proceeding pursuant to Rule 15.08.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

15.07 Probation Violation

Subdivision 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by Rule 4.03, or the court may schedule a review hearing and provide notice of the hearing as provided in Rule 25. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, if any, shall include:

(1) the name, date of birth and address of the child;

(2) the name and address of the child's parent(s), legal guardian, or legal custodian;

(3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and

(4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to Rule 25.

Subd. 2. Detention Hearing. Detention pending a probation violation hearing is governed by Rule 5.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

(1) for a child in custody, at or before the detention hearing; or

(2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

(1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial.* If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of Rule 15.07, subdivision 4.

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing.* The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved.* If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes, section 260B.198; or

(2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

The dispositional order shall comply with Rule 15.05, subdivisions 2 and 3.

Rule 15.02 governs the timing of dispositional orders in probation violation matters.

(Amended December 12, 1997, for all juvenile actions commended or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective July 1, 2015.)

15.08 Other Modifications

Subdivision 1. Generally. Rule 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Subd. 2. Modification by Agreement. A disposition may be modified by agreement of all the parties, either in writing or on the record. All agreements to modify a disposition must be approved by the court, and the court may order the parties to appear at a hearing to examine the merits of the modification and verify the voluntariness of the agreement on the record.

Subd. 3. Motion for Modification. All modification proceedings, shall be commenced by the filing of a motion or petition to modify the disposition. The motion for modification shall be in writing and shall be served and filed along with accompanying attachments, if any, in accordance with Rule 27. The motion or its attachments shall state the proposed modification and the facts and circumstances supporting such a modification.

Subd. 4. Written Request for Modification. If a child is not represented by counsel, the child or the child's parent may submit to the court a written request for modification and send a copy of the written request to the prosecuting attorney.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying attachments, if any, whether there is good cause to believe that a modification of the disposition is warranted under Rule 15.08, subdivision 8. If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with Rule 15.08, subdivision 6(A). If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to Rule 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has violated the terms of probation or a court order and:

(1) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

(2) the child or others are in danger of imminent harm; or

(3) the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing.* Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing.* The modification hearing shall be conducted in accordance with Rule 15.04. The moving party bears the burden of proving that modification is warranted under Rule 15.08, subdivision 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

(A) insufficient to restore the child to lawful conduct; or

(B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with Rule 15.05, subdivisions 2 and 3.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

Comment--Rule 15

The disposition for a child who has been designated an extended jurisdiction juvenile is also governed by Minn. R. Juv. Del. P. 19.10. Dispositional choices are enumerated in Minnesota Statutes 2002, section 260B.198, subdivisions 1 and 2. Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. Del. P. 19.11.

Minn. R. Juv. Del. P. 15.02 subd 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See In re Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

The juvenile court and court personnel should make every effort to utilize culturally specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn. R. Juv. Del. P. 15.03. The juvenile court should also keep in mind possible cultural issues and biases when evaluating predisposition reports, particularly when a culture-specific evaluation program is not available. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 46-47, 104, 108 (1994).

Before placing a child in a secure treatment facility the court may conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility; conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and conduct an educational and physical assessment of the juvenile. See Minnesota Statutes 2002, section 260B.198, subdivision 4.

When the child has counsel, counsel has the right and the duty to appear at and participate in the disposition hearing.

As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. See In re Welfare of N.W., 405 N.W.2d 512, 516-17 (Minn. Ct. App. 1987) (citing Scheibe v. Scheibe, 241 N.W.2d 100 (Minn. 1976); VanZee v. VanZee, 226 N.W.2d 865 (Minn. 1974); Stanford v. Stanford, 123 N.W.2d 187 (Minn. 1963)).

The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report. However, Rules 15.03 and 15.04 do not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

Under Minn. R. Juv. Del. P. 15.05 subd 1, the decision to either adjudicate the child or grant a continuance without adjudication and the choice of disposition shall be made at the same time and in a single dispositional order. Accord Minn. R. Juv. Del. P. 21.03 subd 1. The purpose of this rule is to eliminate multiple appeals. Because both an adjudicatory order and a dispositional order are final, appealable orders, if the court adjudicates the child or grants a continuance without adjudication and then enters a dispositional order at a later date, the child is forced to appeal twice: once from the adjudicatory order and once from the dispositional order. By requiring the court to defer the adjudicatory decision until the time of disposition, the child can appeal both orders at the same time in one appeal.

Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in In re Welfare of M.D.S., 514 N.W.2d 308 (Minn. Ct. App. 1994). There, the juvenile court entered an order finding that the allegations of the petition had been proved. The order also stated that adjudication was withheld but only for the purpose of transferring the case to the child's home county for disposition and further proceedings. The child attempted to appeal the order finding that the allegations of the petition had been proved. The appellate court held that the order was not appealable because it neither adjudicated the child delinquent nor finally determined that adjudication was withheld. Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn. R. Juv. Del. P. 15.05 subd 1, it should be clear that there can be no appeal of the finding that the allegations of the charging document have been proved until after the court enters a dispositional order.

An order adjudicating a child delinquent prior to disposition is ineffective and not appealable. But the order becomes appealable as part of the disposition once a dispositional order is made. See In re Welfare of G.M., 533 N.W.2d 883, C9-95-812 (Minn. Ct. App. July 3, 1995).

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minnesota Statutes 2002, section 260B.171, subdivision 2, paragraph (a).

Minnesota Statutes 2002, section 260B.198, subdivision 1, requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures. Minn. R. Juv. Del. P. 15.05 subd 2(A) reiterates the statutory principle.

Minn. R. Juv. Del. P. 15.05 subd 2(B) recites some of the general principles relating to dispositions that have developed under Minnesota law.

a. The content of Minn. R. Juv. Del. P. 15.05 subd 2(B) is largely derived from Minnesota Statutes 2002, section 260B.001, subdivision 2; Minnesota Statutes 2002, section 260B.198, subdivision 1; In re Welfare of A.R.W. & Y.C.W., 268 N.W.2d 414, 417 (Minn. 1978) cert. denied 439 U.S. 989 (1978); In re Welfare of D.S.F., 416 N.W.2d 772 (Minn. Ct. App. 1987) pet. for rev. denied (Minn. Feb. 17, 1988); and In re Welfare of L.K.W., 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-American Bar Association, Juvenile Justice Standards: Standards Relating to Dispositions (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by focusing on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

b. The overriding purpose in every juvenile delinquency disposition, declared by statute, is to "promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." Minnesota Statutes 2002, section 260B.001, subdivision 2. This statute and another declare the means to be employed by the juvenile court to serve its public safety purpose. First, the purpose of the court "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." Id. Second, the court is to employ dispositions that are "deemed necessary to the rehabilitation of the child." Minnesota Statutes 2002, section 260B.198, subdivision 1. Each judicial district, after consultation with local county attorneys, public defenders, corrections personnel, victim advocates, and the public, is required to have written criteria for determining delinquency dispositions developed by September 1, 1995. See Minnesota Laws 1994, chapter 576, section 59.

Where appropriate, the court should make every effort to use any available culturally specific programs when making a disposition for a juvenile. The court should also be aware of racial disparities in dispositions among similarly situated juveniles, particularly for those offenses which have historically resulted in more severe sanctions for minorities. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 103-04, 108-09.

Minn. R. Juv. Del. P. 15.05 subd 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (c), shall be for a specified length of time. See Minnesota Statutes 2002, section 260B.198, subdivision 9.

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (d), is determined by the Commissioner. See In re Welfare of M.D.A., 237 N.W.2d 827 (Minn. 1975).

"Withholding of adjudication" was redesignated as "continuance without adjudication" to conform with the statutory language of Minnesota Statutes 1994, section 260.185, subdivision 3. Continuance without adjudication is now authorized by Minnesota Statutes 2002, section 260B.198, subdivision 7. The court must find that the allegations of the charging document have been proved before it can continue a case without adjudication. Id. The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. Id.

Continuance without adjudication (or withholding of adjudication) has a material effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines assigned one criminal history point for every two felony-level "juvenile adjudications." See Minnesota Sentencing Guidelines II.B.4 (1982). In State v. Peterson, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. Id. at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. Minnesota Sentencing Guidelines II.B.4 (2002). Because Minnesota Statutes, section 260B.198, subdivision 7, requires a finding that the juvenile committed the offense alleged in the charging document before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et al. 12 Minnesota Practice at 215 (1997). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minnesota Statutes 2002, section 609.117, subdivision 1, clause (3), (provision of biological specimens for DNA analysis).

A continuance without adjudication or continuance for dismissal under Minn. R. Juv. Del. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes 2002, section 388.24. With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Much of Minn. R. Juv. Del. P. 15.07 was taken from Minn. R. Crim. P. 27.04. There was question as to whether probation officers could detain juveniles pending a probation violation hearing for 72 hours pursuant to Minnesota Statutes 2004, sections 244.195, subdivision 2, and 401.025, subdivision 1. Minn. R. Juv. Del. P. 1507 subd 2 was clarified to indicate that the maximum period for the detention of juveniles pending a probation violation hearing is 36 hours pursuant to Minn. R. Juv. Del. P. 5 and Minnesota Statutes 2004, section 260B.176, subdivision 2.

The three-step Austin analysis (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) is not required when revoking a juvenile's probation under Minn. R. Juv. Del. P. 15.07 subd 4(D) "because the juvenile rules afford non-EJJ juvenile probationers better protection against the reflexive execution of a stayed disposition requiring confinement in a secure facility than Austin would afford." In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

Unless all the parties agree to a proposed modification, the court may not order modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn. R. Juv. Del. P. 15.08 in order to give the parties an opportunity to contest the proposed modification before it is imposed.

Under Minn. R. Juv. Del. P. 15.08 subd 2, the court is not required to hold a hearing to examine a modification agreement on the record in every case. But agreements to make upward modifications to a disposition will normally require a court appearance and approval on the record in order to ensure that the proposed modification complies with the law, and that the child appreciates the significance of the modification and voluntarily consents to the modification. The discretion to approve a modification without an appearance is intended to be reserved for relatively minor, usually downward, modifications.

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.

Minnesota Statutes 2002, section 260B.154, addresses the court's authority to issue a warrant for immediate custody for the child. Minnesota Statutes, section 260B.175, subdivision 1, paragraph (c), addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

Counsel for the child has the right and duty to appear at and participate in all probation revocation and modification proceedings and hearings. See Minn. R. Juv. Del. P. 3.02 subd 4.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 16. Post-Trial Motions

16.01 Post-Trial Motions

Subdivision 1. Grounds. The court, on written motion of the child's counsel, may grant a new trial on any of the following grounds:

(A) if required in the interests of justice;

(B) irregularity in the proceedings of the court or in any court order or abuse of discretion by the court, if the child was deprived of a fair trial;

(C) misconduct of the prosecuting attorney;

(D) accident or surprise which could not have been prevented by ordinary prudence;

(E) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(F) errors of law occurring at the trial and objected to at the time or, if no objection is required, assigned in the motion;

(G) the finding that the allegations of the charging document are proved is not justified by the evidence or is contrary to law; or

(H) ineffective assistance of child's counsel.

Subd. 2. Basis of Motion. A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit or written statement signed under penalty of perjury pursuant to Minnesota Statutes, section

358.116, except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3. Time for Motion.

(A) *Generally.* Notice of a motion for a new trial shall be served within fifteen (15) days after the court's specific findings are made pursuant to Rule 13.09. The motion shall be heard within thirty (30) days after the court's specific findings are made pursuant to Rule 13.09 unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period.

(B) *New Evidence.* Notice of a motion for a new trial based on new evidence shall be served and filed within fifteen (15) days of the filing of the court's order for adjudication and disposition. The motion shall be heard within fifteen (15) days of the filing of the notice of motion for new trial. Upon a showing that new evidence exists, the court shall order that a new trial be held within thirty (30) days, unless the court extends this time period for good cause shown within the thirty (30) days.

Subd. 4. Time for Serving Affidavits or Written Statements. When a motion for new trial is based on affidavits or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, they shall be served with the notice of motion. The prosecuting attorney shall have ten (10) days after such service in which to serve responsive documents. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply documents.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

16.02 Motion to Vacate the Finding That the Allegations of the Charging Document Are Proved

The court, on motion of the child's counsel, shall vacate the finding that the allegations of the charging document are proved and dismiss the charging document if it fails to charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fifteen (15) days of the finding that the allegations of the charging document are proved or within such time as the court may fix during the fifteen (15) day period. If the motion is granted, the court shall make written findings specifying its reasons for vacating the finding that the allegations of the charging document are proved and dismissing the charging document.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

16.03 Joinder of Motions

Any motion to vacate the finding that the allegations of the charging document are proved shall be joined with a motion for a new trial.

16.04 New Trial on Court's Own Motion

The court, on its own motion, may order a new trial upon any of the grounds specified in Rule 16.01, subdivision 1 within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

16.05 Order

Orders issued pursuant to this rule shall be in writing.

(Added effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

Comment--Rule 16

References to "child's counsel" includes the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Minn. R. Juv. Del. P. 16.01 subd 3 provides that notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved, except for a motion for new trial based on the grounds of new evidence. Minnesota Statutes 2002, section 260B.411, provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. There, a child must bring a motion for new trial based on new evidence within fifteen (15) days of the filing of the court's order for adjudication and disposition. Id. Motions for new trial brought on other grounds must be brought within fifteen (15) days after the finding that the allegations of the charging document are proved as provided by this rule. Minn. R. Juv. Del. P. 16.01 subd 3.

In re Welfare of D.N. held that a juvenile must move for a new trial to raise an appealable issue on evidentiary rulings. In re Welfare of D.N., 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), review denied (Minn. Nov. 29, 1994). It should be noted that D.N. was a child in need of protection or services and not a delinquent. The procedures for delinquent children are more closely aligned with the rules of adult criminal court.

Rule 17. Juvenile Petty Offender and Juvenile Traffic Offender

17.01 Scope, Application and General Purpose

Rule 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes, section 260B.007, subdivision 16, or juvenile traffic offenders as defined by Minnesota Statutes, section 260B.225. The purpose of Rule 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense, except as provided in Rule 3.02, subd. 5. Except as otherwise provided in this rule, the general rules of juvenile delinquency procedure apply to juvenile petty and juvenile traffic matters.

Subdivision 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16.

The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level offenses.

Subd. 2. Juvenile Traffic Offender. A juvenile traffic offender is any child alleged to have committed a traffic offense except those children under the jurisdiction of adult court as provided in Minnesota Statutes, section 260B.225.

A traffic offense is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.02 Right to Counsel

Subdivision 1. Generally. In any proceeding in which a child is charged as a juvenile petty offender or a juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to counsel at public expense, except:

(A) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(B) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

Subd. 2. Waiver. Any waiver of counsel must be knowing, intelligent, and voluntary. A waiver of counsel shall be in writing or made orally on the record.

Subd. 3. For Appeal. A child adjudicated a juvenile petty offender or juvenile traffic offender does not have the right to counsel at public expense for the purposes of appeal except at the discretion of the Office of the State Public Defender as set out in Rule 21.02, subdivision 2.

Subd. 4. Parent, Legal Guardian or Legal Custodian as Counsel. A parent, legal guardian or legal custodian may not represent the child unless licensed as an attorney.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.03 Warrants

The issuance of warrants under this Rule is governed by Rule 4.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.04 The Charging Document and Notice of Arraignment

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to Rule 6 with proper notice given pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding, and the child may resolve the case by paying a citation in lieu of appearing at arraignment as provided in Rule 6.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

17.05 Arraignment

Subdivision 1. Generally. An arraignment is a hearing in which a child shall enter a plea of guilty or not guilty in the manner provided in Rule 17.06.

Subd. 2. Timing. Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding, that is:

(A) *Child in Custody.* The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(B) *Child Not in Custody.* The child not in custody shall be arraigned no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 3. Hearing Procedure. Children alleged to be juvenile petty offenders or juvenile traffic offenders may be arraigned as a group and shall be arraigned individually and confidentially upon request. At the start of the arraignment, the court shall inform the child(ren) of the following rights and possible dispositions:

(A) the right to remain silent;

(B) the right to counsel at any point throughout the proceedings, including the limited right to appointment of counsel at public expense;

(C) the right to plead not guilty and have a trial in which the child is presumed innocent unless and until the prosecuting attorney proves the allegations beyond a reasonable doubt;

(D) the right of the child to testify on the child's own behalf;

(E) the right to call witnesses using the court's subpoena powers;

(F) *For a Juvenile Petty Offender.*

(1) the dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6, if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt; and

(2) if the offense is a second misdemeanor-level juvenile petty offense, the possibility that any same or similar offense will be charged as a misdemeanor in a delinquency petition;

(G) *For a Juvenile Traffic Offender.* The dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.225, subdivision 9, if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt.

Subd. 4. Reading of Allegations of Charging Document. The court shall read the allegations of the charging document to the child and determine that the child understands them, and, if not, provide an explanation.

Subd. 5. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of the charges made and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges in the charging document. A challenge of probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 6. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring the child to plead guilty or not guilty to the charges stated in the charging document.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

17.06 Pleas

Subdivision 1. Plea of Guilty. Before the court accepts a plea of guilty, the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written plea petition if the child is represented by counsel, determine:

(A) whether the child understands:

(1) the nature of the offense alleged;

(2) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(3) the right to trial;

(4) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;

(5) the right to remain silent;

(6) the right to testify on the child's own behalf;

(7) the right to confront witnesses against oneself;

(8) the right to subpoena witnesses;

(9) that the child's conduct constitutes the offense to which the child pled guilty;

(B) whether the child makes any claim of innocence; and

(C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

Subd. 2. Plea of Not Guilty. Upon a plea of not guilty, the matter shall be set for trial and the court shall advise the child of the discovery procedures as set forth in Rule 17.07.

Subd. 3. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, for any just reason;

(B) at any time, if out-of-home placement is proposed based upon a plea or adjudication obtained without the assistance of counsel; or

(C) after disposition, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 4. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of a lesser degree; or

(B) a plea of guilty to a different offense than that alleged in the charging document.

A plea of guilty to a lesser included offense or to an offense of a lesser degree may be entered without an amendment of the charging document. If a plea to a different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 5. Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings. The court shall make a finding within fifteen (15) days of the plea of guilty:

(A) that the plea has been accepted and the allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document have been proved, the court shall schedule further proceedings pursuant to Rule 17.09.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.07 Discovery

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to Rule 10. Otherwise discovery shall proceed as follows: The prosecuting attorney shall, as soon as possible, provide the child with copies of statements and police reports. At least ten (10) days before trial, the parties shall exchange the names of witnesses they intend to have testify at trial as well as exhibit lists.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.08 Pretrial and Omnibus Hearing

Upon request of either party, the court shall hold a pretrial and/or an omnibus hearing in the manner provided for delinquency proceedings pursuant to Rules 11 and 12.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.09 Adjudication and Disposition

Subdivision 1. Predisposition Reports. Before finding that the allegations of the charging document have been proved, the court may order an investigation of the personal and family history and environment of the child and outpatient psychological or chemical dependency evaluations of the child. The information and recommendations contained in the predisposition report(s) shall be made known to the child, child's parent(s), legal guardian or legal custodian before the disposition hearing.

Subd. 2. Adjudication and Disposition. Within forty-five (45) days from the finding that the allegations of the charging document are proved, the court shall:

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6.

(B) *For a Juvenile Traffic Offender.* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9.

The order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request. The court administrator shall serve the written findings as provided in Rule 28.

Subd. 3. Probation Revocation. Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to Rule 15.07 except for the following:

(A) *Warrant.* The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that: the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

(B) *Advisory.* Prior to the child admitting or denying the allegations in the probation violation report, the court shall advise the child of the following:

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel at public expense, unless the child is subject to out-of-home placement;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6, for a juvenile petty offender or a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9 for a juvenile traffic offender.

Subd. 4. Other Modifications. Other modification proceedings shall be conducted in the same manner as delinquency modification proceedings pursuant to Rule 15.08 except that the court may not order a delinquency disposition. For a juvenile petty offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5, and 6 and for a juvenile traffic offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9. The modification order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

17.10 Transfer to Adult Court of Juvenile Traffic Matter

Subdivision 1. On Motion of Court or Prosecuting Attorney. The court, after a hearing and on its own motion or on motion of the prosecuting attorney, may transfer a juvenile traffic offender case to adult court if it makes a written order to transfer which finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

Subd. 2. Method of Transfer. The court shall transfer the case by transferring all documents in the court file to adult court together with the order to transfer.

Subd. 3. Effect of Transfer. Upon transfer, jurisdiction of the juvenile court is deemed not to have attached and the adult court shall proceed with the case as if it had never been in juvenile court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

17.11 Child Incompetent to Proceed

If a child is believed to be incompetent to proceed, the court may proceed according to Rule 20, direct that civil commitment proceedings be initiated, direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

17.12 to 17.19 [Repealed and Renumbered effective September 1, 2003]

Comment--Rule 17

In 1995, the legislature expanded the definition of "juvenile petty offense." Pursuant to Minnesota Statutes 1995 Supplement, section 260.015, subdivision 21, a juvenile petty offense included the following:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of Minnesota Statutes, section 609.685;

(d) a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult;

(e) an offense, other than a violation of Minnesota Statutes, section 609.224, 609.324, 609.563, 609.576, or 617.23, that would be a misdemeanor if committed by an adult if:

(1) the child has not been found to be a juvenile petty offender on more than two prior occasions for a misdemeanor-level offense;

(2) the child has not previously been found to be delinquent for a misdemeanor, gross misdemeanor, or felony offense; or

(3) the county attorney designates the child on the petition as a juvenile petty offender, notwithstanding the child's prior record of misdemeanor-level juvenile petty offenses. Minnesota Statutes 1995 Supplement, section 260.015, subdivision 21.

This definition of juvenile petty offense applied to crimes committed on or after July 1, 1995. Minnesota Laws 1995, chapter 226, article 3, section 65.

In 1996, the legislature again revised the definition of "juvenile petty offense." Pursuant to Minnesota Laws 1996, chapter 408, article 6, section 1, a juvenile petty offense included:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of Minnesota Statutes, section 609.685;

(d) a violation of local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult; and

(e) an offense that would be a misdemeanor if committed by an adult, except:

(1) a misdemeanor-level violation of Minnesota Statutes, section 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, or 617.23;

(2) a major traffic offense or an adult court traffic offense, as described in Minnesota Statutes, section 260.193;

(3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

(4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" included a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995. Minnesota Laws 1996, chapter 408, article 6, section 1.

This definition of juvenile petty offense applied to crimes committed on or after August 1, 1996. Minnesota Laws 1996, chapter 408, article 6, section 13. Minn. R. Juv. Del. P. 17.01 subd 1 reflected the definition of "juvenile petty offense" set forth pursuant to Minnesota Laws 1996, chapter 408, article 6, section 1. However, because this definition often changed, Rule 17.01, subd. 1 now refers to the applicable statute. See Minnesota Statutes 2002, section 260B.007, subdivision 16.

The legislature reorganized the law relating to juvenile delinquency and child protection in 1999. Minnesota Laws 1999, chapter 139. This recodification is found in Minnesota Statutes, sections 260B.001 to 260B.446, for juvenile delinquency.

Minnesota Statutes 2002, section 260B.225, subdivision 2, provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. Such matter shall be initiated and shall proceed in the same manner as any other delinquency.

At the arraignment, the court may inform each child of his or her rights and the possible consequences by reading and having each child sign a sheet outlining those rights. A suggested form for this rights sheet is included in the appendix of forms, following these rules.

Minn. R. Juv. Del. P. 17.10 is based on Minnesota Statutes 2002, section 260B.225, subdivision 7, which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

The right to appeal is set forth in Minnesota Statutes 2002, section 260B.415, subdivision 1.

Rule 18. Certification of Delinquency Matters

18.01 Application

Subdivision 1. Generally. This rule is applicable when the prosecutor moves for certification and a child is alleged to have committed, after becoming fourteen (14) years of age, an offense that would be a felony if committed by an adult.

Subd. 2. First Degree Murder Accusation. The district court has original and exclusive jurisdiction in criminal proceedings concerning a child alleged to have committed murder in the first degree after becoming sixteen (16) years of age. Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult court proceedings with the offense of first degree murder, juvenile court jurisdiction terminates for all proceedings arising out of the same behavioral incident.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

18.02 Initiation of Certification Proceedings of Delinquency Matters

Subdivision 1. Generally. Proceedings to certify delinquency matters pursuant to Minnesota Statutes, section 260B.125, may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to Rule 5 or 7, or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first. The motion shall be in writing and comply with the provisions of Rule 27, and shall include a statement of the grounds supporting the certification.

Subd. 2. First Degree Murder Accusation. When the delinquency petition that is the basis for the motion for certification alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present the case to the grand jury for consideration of an indictment under Minnesota Statutes, chapter 628, within fourteen (14) days after the petition is filed.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

18.03 Notice of Certification

Notice of the initial appearance under Rule 18.05, subdivision 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to Rule 25.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

18.04 Certification Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the certification proceeding.

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions: (a) the report shall address each of the public safety considerations of Rule 18.06, subdivision 3; and (b) the report shall address all options of the trial court under Rule 18.07,

namely: (i) certification; (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in non-presumptive certification cases.

Subd. 3. Costs. Preparation costs and court appearance expenses for person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The report shall not be disclosed to the public except by court order.

Subd. 5. Admissibility. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent trial.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015.)

18.05 Hearing

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court, including victims. The court shall open the hearings to the public in certification proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The certification hearing shall be held within thirty (30) days of the filing of the certification motion. Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

(C) *Waiver.* The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance in Certification Proceeding. At the initial appearance following the motion for certification the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) appoint counsel, if not previously appointed;

(D) determine whether notice requirements have been met and if not whether the affected persons waive notice;

(E) schedule further hearings including: a probable cause hearing, unless waived; the certification hearing under Rule 18.05, subdivision 4; and a pre-hearing conference if requested; and

(F) order studies pursuant to Rule 18.04, if appropriate.

Subd. 3. Probable Cause Determination.

(A) *Timing.* Unless waived by the child or based upon an indictment, a hearing and court determination on the issue of probable cause shall be completed within fourteen (14) days of filing the certification motion. The court may, on the record, extend this time for good cause.

(B) *Standard.* A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(C) *Presumption.* Upon a finding of probable cause, the court shall determine whether the presumption for certification under Rule 18.06, subdivision 1 applies.

(D) *Waiver.* The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 4. Conduct and Procedure for Certification Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses; and

(4) present arguments for or against certification.

(B) *Evidence.* All evidence considered by the court on the certification question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the certification issue, including reliable hearsay and opinions.

(C) *Order of Hearing; Presumptive Certification.*

(1) The child's counsel may make an opening statement, confining the statement to the facts that the child expects to prove.

(2) The prosecuting attorney may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to the facts expected to be proved.

(3) The child's counsel shall offer evidence against certification.

(4) The prosecuting attorney may offer evidence in support of the motion for certification.

(5) The child's counsel may offer evidence in rebuttal of the evidence for certification, and the prosecuting attorney may then offer evidence in rebuttal of the child's rebuttal evidence. In the interests of justice, the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Order of Hearing; Non-presumptive Certification.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts that the prosecutor expects to prove.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of certification, or alternatively, designation as an extended jurisdiction juvenile proceeding.

(4) The child's counsel may offer evidence in defense of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(E) *Burdens of Proof.* In a presumptive certification hearing under Rule 18.06, subdivision 1, the child shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. In non-presumptive certification hearings under Rule 18.06, subdivision 2, the prosecuting attorney shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

18.06 Certification Determination

Subdivision 1. Presumption of Certification. Pursuant to Minnesota Statutes, section 260B.125, subdivision 3, it is presumed that a child will be certified for action under the laws and court procedures controlling adult criminal violations if:

(A) the child was sixteen (16) or seventeen (17) years old at the time of the offense;

(B) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(C) probable cause has been determined pursuant to Rule 18.05, subdivision 3.

The presumption of certification is overcome if the child demonstrates by clear and convincing evidence that retaining the proceedings in juvenile court serves public safety.

Subd. 2. Non-presumptive Certification. If there is no presumption of certification as defined by subdivision 1, the court may order certification only if the prosecuting attorney has demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

Subd. 3. Public Safety. In determining whether the public safety is served by certifying the matter, or in designating the proceeding an extended jurisdiction juvenile proceeding, the court shall consider the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

Subd. 4. Prior Certification. The court shall order certification in any felony case if the prosecutor shows that the child was previously prosecuted and convicted in adult proceedings that were certified pursuant to Minnesota Statutes, section 260B.125, subdivision 5.

Subd. 5. Extended Juvenile Court Jurisdiction.

(A) *Presumptive Certification.* If the juvenile court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution.

(B) *Non-presumptive Certification.* If the court does not order certification in a non-presumptive certification case, the court may consider designating the proceeding an extended jurisdiction juvenile prosecution. Designation as an extended jurisdiction juvenile prosecution may only occur if the prosecuting attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in Rule 18.06,

subdivision 3. Absent this showing the case shall proceed as a delinquency proceeding in juvenile court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

18.07 Order

Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order. When a child waives the right to a certification hearing and stipulates to certification, the court shall, within five (5) days of that hearing, file an order with written findings of fact and conclusions of law that states:

(A) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(B) a finding of probable cause in accordance with Rule 18.05, subdivision 3, unless the accused was presented by means of an indictment;

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense; and

(D) if the child is currently being detained, that:

(1) the child be detained in an adult detention facility; and

(2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays, or legal holidays, or as soon thereafter as a judge is available.

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the certification hearing the court shall file an order with written findings of fact and conclusions of law as set forth in this subdivision.

(A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:

(1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(2) a finding of probable cause in accordance with Rule 18.05, subdivision 3 unless the accusation was presented by means of an indictment;

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense;

(c) why the court upheld the presumption of certification under Rule 18.06, subdivision 1 or, if the presumption of certification does not apply but the court orders certification,

why public safety, as defined in Rule 18.06, subdivision 3, is not served by retaining the proceeding in juvenile court; and

(4) if the child is currently being detained, that (a) the child be detained in an adult detention facility, and (b) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays or legal holidays or as soon thereafter as a judge is available.

(B) *Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile.*

(1) If the court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution. The order shall state why certification is not ordered with specific reference as to why designation as an extended jurisdiction juvenile prosecution serves public safety under the factors listed in Rule 18.06, subdivision 3.

(2) If the court does not order certification in a non-presumptive certification case, the court may designate the proceeding an extended jurisdiction juvenile prosecution pursuant to Rule 18.06, subdivision 5(B). The order shall state why certification was not ordered and why the proceeding was designated as an extended jurisdiction juvenile prosecution.

If the court designates the case as an extended jurisdiction juvenile prosecution, the case shall proceed pursuant to Rule 19.09.

(C) *Retention of Jurisdiction by Juvenile Court.* If the court does not order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in Rule 18.06, subdivision 3. Further proceedings shall be held pursuant to Rule 7.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

Subd. 4. Final Order. Any order issued pursuant to this rule is a final order.

Subd. 5. Appeal. An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

18.08 Termination of Jurisdiction Upon Certification

Subdivision 1. Child Not in Detention. Once the court enters an order certifying a proceeding, the jurisdiction of the juvenile court terminates immediately over a child who is not then detained in custody. All subsequent steps in the case are governed by the Minnesota Rules of Criminal Procedure.

Subd. 2. Child in Detention. If the child is detained at the time certification is ordered:

(A) If the alleged offense was committed in the same county where certification is ordered, juvenile court jurisdiction terminates immediately and the prosecuting attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to Rule 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in five (5) days or before if the prosecuting attorney files a complaint as provided under Minn. R. Crim. P. 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minn. R. Crim. P. 5.01(d) and 6.02; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

Subd. 3. Stay. Notwithstanding the preceding provisions of subdivisions 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in Rule 21.03, subdivision 3. A motion for stay of the certification order pending appeal shall first be heard by the juvenile court.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

18.09 Withdrawal of Waiver of Certification Hearing

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of certification hearing and stipulation to certification order:

(A) within fifteen (15) days of the filing of the order for certification, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the certification order. A motion shall also be filed for a stay of proceedings in the adult court to which the case was certified.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of waiver:

(A) the waiver was not knowingly, voluntarily, and intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal of waiver is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of certification hearing: 1) the court shall vacate the order for certification, and proceedings will resume in juvenile court pursuant to Rule 18; and 2) the court shall review the order for custody or

conditions of release. If the court denies the motion to withdraw the waiver for certification hearing, the certification order shall remain in effect, and proceedings will resume in adult court.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 18

Pursuant to Minnesota Statutes 2002, section 260B.125, subdivision 6, on a proper motion, the court may hold a certification hearing for an adult charged with a juvenile offense if:

(1) the adult was alleged to have committed an offense before his or her 18th birthday; and

(2) a petition was timely filed under Minnesota Statutes 2002, sections 260B.141 and 628.26. The court may not certify the matter if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage. Minnesota. Statutes 2002, section 260B.125, subdivision 6; see also In re Welfare of A.N.J., 521 N.W.2d 889, 891 (Minn. Ct. App. 1994). Juvenile court retains jurisdiction to hear a certification motion filed after the child's 19th birthday provided a delinquency petition has been timely filed and the delay was not the result of an improper state purpose.

Much of the text of Minn. R. Juv. Del. P. 18.05 subd 1(A) is taken from Minnesota Statutes 2002, section 260B.163.

The sanction for delay in Minn. R. Juv. Del. P. 18.05 subd 1(B) and 18.07 subd 3 is modeled after Minn. R. Crim. P. 11.10, which as of January 1, 2010 is now Minn. R. Crim. P. 11.09. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available, mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

On continuation questions under Minn. R. Juv. Del. P. 18.05 subd 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn. R. Juv. Del. P. 18.05 subd 1(C) is taken from the 1983 version of Minn. R. Juv. Del. P. 15.03.

Minn. R. Juv. Del. P. 18.05 subd 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes 2002, section 260B.163, subdivision 7, the custodial parent or guardian of the child who is the subject of the certification proceedings must accompany the child at each hearing, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes 2002, section 260B.154.

Much of the content of Minn. R. Juv. Del. P. 18.05 subd 3 is modeled after Minn. R. Crim. P. 11.04 and 18.05 subd 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.04. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 18.05 subd 3 and 18.07 subd 2(A)(2) eliminate the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree

murder in adult proceedings. See Minnesota Statutes 2002, section 260B.007, subdivision 6. Minn. R. Juv. Del. P. 18.05 subd 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. Del. P. 18.05 does not address the consequences of the child's testimony at a hearing. See Simmons v. United States, 390 U.S. 377 (1968) and State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

When a child waives probable cause solely for the purpose of certification, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. Del. P. 18.05 subd 4(C) or (D), the adverse party may move the court for directed relief on the grounds that the burden of proof has not been met by the evidence presented.

The determination under Minn. R. Juv. Del. P. 18.06 subd 1 whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines. The public safety factors listed in Rule 18.06 subd 3 mirror those set forth in Minnesota Statutes, section 260B.125, subdivision 4, and eliminate the need for non-offense related evidence of dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Under Minnesota Statutes 2002, sections 260B.101, subdivision 2, 260B.007, subdivision 6, paragraph (b), and 260B.125, subdivision 10, the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive jurisdiction of the juvenile court, but subject to action of the juvenile court on any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

Under Minn. R. Crim. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. State v. Behl, 564 N.W.2d 560 (Minn. 1997). As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

Minn. R. Juv. Del. P. 18.02 subd 2 repeats the procedural requirement stated in Minnesota Statutes 2002, section 260B.125, subdivision 9.

Rule 18 previously contained a provision that allowed jail credit for time spent in custody in connection with the offense or behavioral incident on which further proceedings are to occur. See Minn. R. Juv. Del. P. 18.06 subd 1(D) (repealed 2003). That provision was deleted because jail credit is awarded at the time of sentencing in adult court, and is thus governed by the Minnesota Rules of Criminal Procedure, not the Minnesota Rules of Juvenile Procedure. See Minn. R. Crim. P. 27.03 subd 4(B).

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

19.01 Initiation of Extended Jurisdiction Juvenile Proceedings and Prosecution

Subdivision 1. Authority. Extended jurisdiction juvenile prosecutions are initiated pursuant to Minnesota Statutes, sections 260B.125 and 260B.130, Rule 18.06, subdivision 5(A) and (B), and Rule 19.

Subd. 2. Definitions.

(A) "Extended jurisdiction juvenile" is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes, section 260B.198, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday.

(B) "Extended jurisdiction juvenile proceeding" includes the process to determine whether a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile proceedings may be initiated pursuant to Rule 19.01, subdivisions 3 and 4.

(C) "Extended jurisdiction juvenile prosecution" includes the trial, disposition, and subsequent proceedings after the determination that a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile prosecutions may be initiated pursuant to Rule 19.06.

Subd. 3. Designation by Prosecuting Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to Rule 6:

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and the offense would, if committed by an adult, result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(B) the prosecuting attorney designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be made at the time the petition is filed, and may be withdrawn by the prosecuting attorney any time before jeopardy attaches.

Subd. 4. Motion by Prosecuting Attorney. The prosecuting attorney may make a written motion pursuant to this Rule to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Rule 6 alleging a felony offense committed after the child's fourteenth (14th) birthday. The motion may be made at the first appearance on the delinquency petition, or within ten (10) days after the first appearance pursuant to Rules 5 and 7 or before jeopardy attaches, whichever of the later two occurs first.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007.)

19.02 Notice of the Extended Jurisdiction Juvenile Proceeding

A notice of the initial appearance under Rule 19.04, subdivision 2, together with a copy of the petition and designation, or a copy of the motion and petition, shall be served pursuant to Rule 25.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

19.03 Extended Jurisdiction Juvenile Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the extended jurisdiction juvenile proceeding.

Subd. 2. Content of Reports. If study reports include a recommendation on the court's actions, the report shall address each of the public safety considerations of Rule 19.05.

Subd. 3. Costs. Preparation costs and court appearance expenses for the person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The report shall not be disclosed to the public except by court order.

Subd. 5. Admissibility of Study. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent trial.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015.)

19.04 Hearings on Extended Jurisdiction Juvenile Proceedings

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court including victims. The court shall open the hearings to the public in extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of an extended jurisdiction juvenile proceedings hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The contested hearing to determine whether the matter will be an extended jurisdiction juvenile prosecution shall be held within thirty (30) days of the filing of the extended jurisdiction juvenile proceeding motion.

Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for the contested hearing for up to an additional sixty (60) days.

(C) *Waiver.* The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance and Probable Cause Determination.

(A) *Timing.* Unless waived by the child, or based upon an indictment, an initial appearance and court determination on the issue of probable cause shall be completed within fourteen (14) days of the filing of the petition designating an extended jurisdictional juvenile proceeding or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause.

(B) At the initial appearance hearing, the court shall:

(1) verify the name, age, and residence of the child who is the subject of the matter;

(2) determine whether all necessary persons are present, and identify those persons for the record;

(3) appoint counsel if not previously appointed;

(4) determine whether notice requirements have been met and if not whether the affected persons waive notice;

(5) schedule further hearings including: a probable cause hearing, unless waived; the contested hearing required by Rule 19.04, subdivision 3; and a pre-hearing conference if requested; and

(6) order studies pursuant to Rule 19.03, if appropriate.

(C) *Offense Probable Cause.* A showing of probable cause to believe that the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(D) *Designation Probable Cause.* If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile proceeding pursuant to Rule 19.01, subdivision 3 and the court finds that:

(1) probable cause exists for an offense that, if committed by an adult, would be a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes or alleges a felony offense in which the child allegedly used a firearm; and

(2) the child was at least sixteen (16) years old at the time of the offense, the court shall order that the matter proceed as an extended jurisdiction juvenile prosecution pursuant to Rule 19.09.

(E) *Waiver.* The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses; and

(4) present arguments for or against extended jurisdiction juvenile prosecution.

(B) *Evidence.* All evidence considered by the court on the extended juvenile jurisdiction question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the issue of extended jurisdiction juvenile prosecution, including reliable hearsay and opinions.

(C) *Order of Hearing.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.

(4) The child's counsel may offer evidence on behalf of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in response to the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to Rule 19.05.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective July 1, 2015.)

19.05 Public Safety Determination

In determining whether public safety would be served, the court shall take into account the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on the victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

19.06 Extended Jurisdiction Juvenile Prosecution Determination

Subdivision 1. Extended Jurisdiction Juvenile Prosecution Required. The court shall designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a presumptive certification case pursuant to Minnesota Statutes, section 260B.125, subdivision 3:

(1) when the court finds, after a contested hearing pursuant to Rule 18.05, that the child has shown by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety pursuant to Rule 18.06, subdivision 3; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate; or

(B) following designation by the prosecuting attorney and findings by the court pursuant to Rule 19.04, subdivision 2(D).

Subd. 2. Extended Jurisdiction Juvenile Prosecution Discretionary. The court may designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a non-presumptive certification case:

(1) when the court finds, after a contested certification hearing, that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety pursuant to Rule 18.06, subdivision 3, and the court determines that extended jurisdiction juvenile prosecution is appropriate; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing; or

(B) following a motion for extended jurisdiction juvenile proceeding:

(1) when the court finds, after a contested extended jurisdiction juvenile hearing conducted pursuant to Rule 19.04, that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

19.07 Order

Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order. When a child waives the right to a contested hearing and stipulates to entry of an order that the child is subject to an extended jurisdiction juvenile prosecution, the court shall, within five (5) days of that hearing, enter a written order stating:

(A) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(B) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense(s).

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing. Within fifteen (15) days of the contested hearing, the court shall file an order with written findings of fact and conclusions of law as provided in this subdivision.

(A) If the court orders that the proceeding be an extended jurisdiction juvenile prosecution, the order shall state:

(1) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05.

(B) If the court does not order that the proceeding be an extended jurisdiction juvenile prosecution, the court order shall state:

(1) that the case shall proceed as a delinquency proceeding in juvenile court;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s);

(c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

Subd. 4. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue of the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall be processed in the manner provided by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. The receiving court thereafter has venue for purposes of all proceedings under Rules 19.10 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and 19.11 (revocation of stay of adult criminal sentence).

Subd. 5. Final Order. Any order issued pursuant to this rule is a final order.

Subd. 6. Appeal. An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight October 1, 2006; amended effective January 1, 2007; amended effective July 1, 2015.)

19.08 Withdrawal of Waiver of Extended Jurisdiction Juvenile Hearing

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of extended jurisdiction juvenile hearing and stipulation to extended jurisdiction juvenile prosecution order:

(A) within fifteen (15) days of the filing of the order, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the extended jurisdiction juvenile prosecution order.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of the waiver:

(A) the waiver was not knowingly, voluntarily, or intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of extended jurisdiction juvenile hearing, the court shall vacate the order for extended jurisdiction

juvenile prosecution, and proceedings will resume pursuant to Rule 19.04. If the court denies the motion to withdraw the waiver for extended jurisdiction juvenile hearing, the order for extended jurisdiction juvenile prosecution shall remain in effect, and proceedings will resume pursuant to Rule 19.09.

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

19.09 Extended Jurisdiction Juvenile Prosecution and Procedure for Seeking an Aggravated Adult Criminal Sentence

Subdivision 1. General Procedure and Timing. Minnesota Statutes, chapters 260and 260B and these Rules apply to extended jurisdiction juvenile prosecutions. However, every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to Minn. R. Crim. P. 26. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to Rule 13.02, except:

(A) The time shall run from the date of the filing of the extended jurisdiction juvenile order.

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty (30) days of the prosecution motion for designation as an extended jurisdiction juvenile prosecution, the trial shall be scheduled within sixty (60) days of the court's order designating the child an extended jurisdiction juvenile, unless good cause is shown why the trial should not be held within that time. If the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty (30) days from the filing of the motion, the trial shall be commenced within thirty (30) days of entry of the court's order designating the child an extended jurisdiction juvenile.

Subd. 2. Notice and Procedure for Seeking an Aggravated Adult Criminal Sentence.

(A) *Notice.* Within seven (7) days after filing of a designation of the proceeding as an extended jurisdiction juvenile prosecution by the court or prosecutor, or at such later time if permitted by the court upon good cause shown and upon such conditions as will not unfairly prejudice the child, the prosecutor shall file and serve on the child's attorney written notice of intent to seek an aggravated adult criminal sentence as defined in Minn. R. Crim. P. 1.04(d). The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated adult criminal sentence.

(B) *Procedure.* If the prosecutor has filed and served notice under this rule of intent to seek an aggravated adult criminal sentence, a hearing shall be held to determine whether the law and proffered evidence support an aggravated adult criminal sentence and, if so, whether the issues will be presented to the jury in a unitary or bifurcated trial. The hearing shall be held prior to trial.

In deciding whether to bifurcate the trial, the court shall consider whether the evidence in support of an aggravated adult criminal sentence is otherwise admissible in the guilt phase of the trial and whether unfair prejudice would result to the child in a unitary trial. A bifurcated trial shall be ordered where evidence in support of an aggravated adult criminal sentence includes evidence that is inadmissible during the guilt phase of the trial or would result in unfair prejudice to the child. If the court orders a unitary trial the court may still order separate final arguments on the issues of guilt and the aggravated adult criminal sentence.

Except as modified by these rules, procedures relating to an aggravated adult criminal sentence are governed by the Minnesota Rules of Criminal Procedure.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight October 1, 2006; amended effective January 1, 2007; amended effective July 1, 2015.)

19.10 Disposition

Subdivision 1. Procedure. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes, section 260B.198; and

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the conditions that the child not violate the provisions of the disposition ordered in subdivision 1(A) above or commit a new offense.

Subd. 2. Length of Stayed Sentence. Unless the stayed sentence is executed after a revocation hearing pursuant to Rule 19.11, jurisdiction of the juvenile court shall terminate on the child's twenty-first (21st) birthday or at the end of the maximum probationary term, whichever occurs first. The court may terminate jurisdiction earlier pursuant to Rule 15.08.

Subd. 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions. If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes, section 260B.198. But if the child has pled guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under Rule 19.10, subdivision 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, the transferring court shall prepare and provide to the receiving court, a copy of the juvenile's file, including the plea and sentencing transcript, if any, and the adult stayed sentence form or order.

Subd. 5. Record of Proceedings.

(A) A verbatim record shall be made of all plea and sentencing proceedings.

(B) A record of the adult stayed sentence shall also be recorded in a sentencing form or order that, at a minimum, contains:

(1) the child's name;

(2) case number;

(3) for each count:

(a) if the child pled guilty to or was found guilty of the offense:

(i) the offense date;

(ii) a citation to the offense statute;

(iii) the precise terms of the adult criminal sentence, and that execution has been stayed;

(iv) the level of sentence; and

(v) the amount of time spent in custody, if any; or

(b) if the child did not plead guilty to or was not found guilty of the offense, that the child was acquitted or the count was dismissed; and

(4) the signature of the sentencing judge.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective November 14, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective July 1, 2015.)

19.11 Revocation

Subdivision 1. Commencement of Proceedings.

(A) *Issuance of Revocation Warrant or Summons.* Proceedings for the revocation of a stayed sentence shall be commenced by the issuance of a warrant or a summons by the court. The warrant or summons shall be based upon a written report showing probable cause to believe that the probationer has violated any of the provisions of the disposition order or committed a new offense. The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. The court may issue a warrant for immediate custody of the probationer if the court finds that there is probable cause to believe that the probationer has violated the terms of probation or a court order, and:

(1) the probationer failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the probationer have failed, or there is a substantial likelihood that the probationer will fail to respond to a summons; or

(2) the probationer or others are in danger of imminent harm; or

(3) the probationer has left the custody of the detaining authority without permission of the court.

(B) *Contents of Warrant and Summons.* Both the warrant and summons shall contain the name of the probationer, a description of the stayed sentence sought to be revoked, and the signature of the issuing judge or judicial officer of the district court. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and stated on the warrant. The warrant shall direct that the probationer be brought promptly before the court. The warrant shall direct that the probationer be brought before a judge or judicial officer without unnecessary delay, and in any

event not later than thirty-six (36) hours after the arrest exclusive of the day of arrest. The summons shall summon the probationer to appear at a stated time and place to respond to the revocation charges.

(C) *Place of Detention.* If the probationer is under eighteen (18) years of age and is to be detained prior to the revocation hearing, the probationer may only be detained in a juvenile facility. If the probationer is eighteen (18) years of age or older and is to be detained, the probationer may be detained in an adult facility.

(D) *Execution or Service of Warrant or Summons; Certification.* Execution, service, and certification of the warrant or summons shall be as provided in Minn. R. Crim. P. 3.03.

Subd. 2. First Appearance.

(A) *Advice to Probationer.* A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be advised of the nature of the violation charged. The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

(1) the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel will be appointed;

(2) unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that the probationer violated any provisions of the disposition order or committed a new offense and that the stayed sentence should therefore be revoked;

(3) before the revocation hearing, all evidence to be used against the probationer shall be disclosed to the probationer and the probationer shall be provided access to all official records pertinent to the proceedings;

(4) at the hearing, both the prosecuting attorney and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) the probationer has the right of appeal from the determination of the court following the revocation hearing.

(B) *Appointment of Counsel.* If the probationer is financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel shall be appointed.

(C) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding whether and upon what conditions to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by Rule 5 and Minn. R. Crim. P. 6.02, subdivisions 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation

proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of Rule 19.11, subdivisions 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) *Finding of Violation of Terms and Conditions of Disposition.*

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may revoke the probationer's extended jurisdiction juvenile status. Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, subdivision 3.

(2) To execute the stayed prison sentence after revocation of extended jurisdiction juvenile status, the court must make written findings that:

(a) one or more conditions of probation were violated;

(b) the violation was intentional or inexcusable; and

(c) the need for confinement outweighs the policies favoring probation.

(3) If the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, and the court has made findings pursuant to clause (2), the court shall order execution of the sentence unless the court makes written findings indicating the mitigating factors that justify continuing the stay.

(D) *Jail Credit for Juvenile Facility Custody.* If the court revokes the probationer's extended jurisdiction juvenile status, the court shall ensure that the record accurately reflects all time spent in custody in connection with the underlying offense at juvenile facilities where the level of confinement and limitations are the functional equivalent of a jail, workhouse, or regional correctional facility. Such time shall be deducted from any adult sentence imposed pursuant to Minnesota Statutes, section 609.14, subdivision 3.

(E) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(F) *Appeal.* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal in Rule 21.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and

all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective November 14, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective July 1, 2015.)

Comment--Rule 19

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn. R. Juv. Del. P. 19.04 subd 1(B) and 19.06 subd 3 is modeled after Minn. R. Crim. P. 11.10, which as of January 1, 2010 is now Minn. R. Crim. P. 11.09. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

Most of the waiver language in Minn. R. Juv. Del. P. 19.04 subd 1(C) is taken from the 1983 version of Minn. R. Juv. Del. P. 15.03.

Minn. R. Juv. Del. P. 19.04 does not address the consequences of the child's testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968); State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985) (impeachment); cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn. R. Juv. Del. P. 19.04 subd 1(B), the victim should have input but does not have the right of a party to appear and object.

Previously, the last sentence to Rule 19.04 subd 2(A) stated, "If witnesses are to be called, the court may continue the hearing." This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

Much of the content of Minn. R. Juv. Del. P. 19.04 subd 3 is modeled after Minn. R. Crim. P. 11.04 and 18.05 subd 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.04. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 19.04 subd 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minnesota Statutes 2002, section 260B.007, subdivision 6.

When a juvenile waives probable cause solely for the purpose of an extended jurisdiction juvenile proceeding, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Minn. R. Juv. Del. P. 19.04 subd 3(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

The public safety factors listed in Minn. R. Juv. Del. P. 19.05 mirror those set forth in Minnesota Statutes 2002, section 260B.125, subdivision 4, and eliminate the need for non-offense related dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by the Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a "good cause" standard for use in determining whether to grant a continuance. "Good cause" is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minnesota Statutes 2002, section 260B.163, subdivision 7, the custodial parent or guardian of the child alleged or found to be delinquent or prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended juvenile jurisdiction proceedings, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes 2002, section 260B.154.

Pursuant to Minnesota Statutes 2002, section 260B.245, if a child is convicted as an extended jurisdiction juvenile, the child will be assigned points for the purpose of computing a criminal history score pursuant to the Minnesota Sentencing Guidelines, as if the child were an adult.

A disposition form developed by the Minnesota Sentencing Guidelines Commission shall be completed by the court in addition to the findings of facts, conclusions of law and order.

A sentencing worksheet developed by the Minnesota Sentencing Guidelines Commission shall be completed by the probation department pursuant to Minn. R. Crim. P. 27, and Minnesota Statutes 2002, sections 609.115 and 631.20. The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn. R. Crim. P. 27.03 subd 4(C).

In accordance with the procedure and law set forth in State v. B.Y., 659 N.W.2d 763 (Minn. 2003), Minn. R. Juv. Del. P. 19.11 subd 3 incorporates consideration of the Austin factors (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) into the court's determination of whether to revoke the stayed prison sentence of an EJJ probationer. This is in contrast to the decision to revoke probation in delinquency cases, for which consideration of the Austin factors is not required. In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

The court's holding in State v. Garcia, 683 N.W.2d 294 (Minn. 2004) and Asfaha v. State, 665 N.W.2d 523 (Minn. 2003) found Minnesota Statutes 2002, section 260B.130, subdivision 5, unconstitutional to the extent it denied credit for time spent in custody in juvenile facilities. Minn. R. Juv. Del. P. 19.11 subd 3 has been amended to require the court to calculate and record the amount of time the probationer spent in custody at juvenile facilities where the level of confinement and limitations were the functional equivalent of a jail, workhouse, or correctional facility. Such time must be deducted from any adult sentence imposed after revocation of extended jurisdiction juvenile status.

The decision in In Re Welfare of T.C.J., 689 N.W.2d 787 (Minn. Ct. App. 2004), that Minnesota Statutes, section 260B.130, subdivision 4, paragraph (b), violates the Equal Protection Clause, raises an issue regarding the application of Minn. R. Juv. Del. P. 19.10 subd 3 which was modeled after the statute.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 20. Child Incompetent to Proceed and Defense of Mental Illness or Cognitive Impairment

20.01 Proceeding when Child is Believed to be Incompetent

Subdivision 1. Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) consult with a reasonable degree of rational understanding with the child's counsel; or

(B) understand the proceedings or participate in the defense due to mental illness or cognitive impairment.

Subd. 2. Counsel. Any child subject to competency proceedings shall be represented by counsel.

Subd. 3. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony or Gross Misdemeanor.* If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Examination.* If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, chapter 253B, to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within sixty (60) days from the order for examination, or earlier if directed by the court, the examiner shall file a written report with the court, and the court shall provide a copy to the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child;

(2) If the child is mentally ill or cognitively impaired, an opinion as to:

(a) whether the child can understand the proceedings and participate in the defense;

(b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

(c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

(d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or cognitive impairment.

Subd. 4. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days to review the report with the parties. If either party objects to the report's conclusion regarding the child's competency to proceed, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the child's counsel moved for the examination, the child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter a written order finding competency. Otherwise, the court shall enter a written order finding incompetency. The court shall enter its written order within fifteen (15) days of the hearing.

Subd. 5. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a misdemeanor, juvenile petty offense, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Rule 20.01, subdivision 7.

(1) If the court determines that the child is mentally ill or cognitively impaired so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Minnesota Statutes, chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection or services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 6. Continuing Supervision by the Court. In felony and gross misdemeanor cases in which proceedings have been suspended, the person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. The court shall provide a copy of the reports to the prosecuting attorney and to the child's counsel.

Unless the charging document against the child has been dismissed as provided by Rule 20.01, subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall

have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 7. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19th) birthday in the case of a delinquency, or twenty-first (21st) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to Rule 20.01, subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 8. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 9. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015; amended effective September 1, 2018.)

20.02 Defense of Mental Illness or Cognitive Impairment at the Time of the Offense

Subdivision 1. When Raised.

(A) If the child intends to raise mental illness or cognitive impairment as a defense, the child's counsel shall advise the court and prosecuting attorney in writing before the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or cognitive impairment expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or cognitive impairment is raised, the court shall order an examination as described in Rule 20.01, subdivision 3(C). The court may order that the examination for competency under Rules 20.01 and 20.02 be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or cognitive impairment;

(B) strike any such evidence previously introduced;

(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; and

(D) make any such other ruling as it deems just.

Subd. 4. Disclosure of Reports and Records of Child's Mental Illness or Cognitive Impairment Examinations.

(A) *Order for Disclosure.* If a child raises the defense of mental illness or cognitive impairment, the trial court, on motion of the prosecuting attorney and notice to the child's counsel may order the child to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental illness or cognitive impairment of the child and relevant to the issue of the defense of mental illness or cognitive impairment. If the copies of the reports and records are furnished to the court for in camera review, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the child. If the child is unable to comply with the court order, a subpoena duces tecum may be issued.

(B) *Use of Reports and Records.* If an order for disclosure of reports and records under this subdivision is entered and copies are furnished to the prosecuting attorney, the reports and records and any evidence obtained from them may be admitted in evidence only upon the issue of the defense of mental illness or cognitive impairment.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be filed with the court, and the court shall provide a copy to the prosecuting attorney and to the child's counsel. The report shall not be disclosed to the public except by court order. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or cognitive impairment as requested by the court;

(B) If so directed by the court, an opinion as to whether, because of mental illness or cognitive impairment, the child at the time of the commission of the offense charged was laboring under such

a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;

(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or cognitive impairment.

Subd. 6. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the child unless the child has previously made his or her mental illness or cognitive impairment an issue in the case. If the child's mental illness or cognitive impairment is an issue, any party may call the person who examined the child at the direction of the court to testify as a witness at the trial. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 7. Trial. When a child is examined under Rule 20.01 or 20.02, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Cognitive Impairment.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely solely on the defense of mental illness or cognitive impairment, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely on the defense of mental illness or cognitive impairment together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or cognitive impairment.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the defense of mental illness or cognitive impairment.

(D) *Procedure Upon Separated Trial of Defenses.*

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to Rule 13.09. If the court determines that the elements of the offense have been proved beyond a reasonable doubt and the child is relying on the sole defense of mental illness or cognitive impairment, the defense of mental illness or cognitive impairment shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or cognitive impairment by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

(a) not guilty by reason of mental illness; or

(b) not guilty by reason of cognitive impairment; or

(c) guilty.

The court shall enter findings pursuant to Rule 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Rule 20.02, subdivision 7(D)(1). A jury trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, subdivision 7.

Subd. 8. Procedure After Hearing.

(A) *Mental Illness or Cognitive Impairment Not Proven.* After a finding of guilty and the defense of mental illness or cognitive impairment not proven, the court shall schedule and conduct a disposition hearing. The issues of the child's mental illness or cognitive impairment shall be considered by the court at disposition.

(B) *Mental Illness or Cognitive Impairment Proven.* When a child is found not guilty by reason of mental illness or cognitive impairment,

(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and shall direct civil commitment proceedings be initiated;

(2) if it is determined that the child does not meet the criteria for civil commitment jurisdiction and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours in an appropriate facility and shall direct CHIPS proceedings be initiated.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective July 1, 2015; amended effective September 1, 2018.)

20.03 Simultaneous Examinations

The court may order a civil commitment examination under Minnesota Statutes, chapter 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

(Added effective July 1, 2015.)

Comment -- Rule 20

Minn. R. Juv. Del. P. 20 is based upon Minn. R. Crim. P. 20.

Under Minn. R. Juv. Del. P. 20.01 subd 3(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child's counsel or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minnesota Statutes 2002, section 260B.331, subdivision 1. Furthermore, under Minnesota Statutes 2002, section 260.042, the court shall make an orientation and educational program available for juveniles and their families in accordance with the program established, if any, by the Minnesota Supreme Court.

"A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult." In re Welfare of D.D.N., 582 N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979). C.f. Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 278 Minn. 212, 215, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minnesota Statutes 2002, section 260B.225, (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been recognized for juveniles in In re Gault, 387 U.S. 1, 41 (1967), the corollary right to self-representation has not been established in the juvenile context. The Committee recognized that children subject to competency proceedings may be vulnerable; therefore, it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

Rule 21. Appeals

21.01 Generally

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, and certification proceedings in district court. Except as provided by these rules, Minnesota Rules of Civil Appellate Procedure shall govern appeals from juvenile court proceedings. These rules do not limit a child's right to seek extraordinary writs. In order to expedite its decision or for other good cause shown, the court of appeals may suspend any of these rules, except the time for filing a notice of appeal. The court of appeals shall expedite all appeals from juvenile court proceedings pursuant to Rule 21.07.

A party may petition to the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or 118.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

21.02 Proceedings in Forma Pauperis

Subdivision 1. Generally. An indigent child wanting to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney shall make application to the office of the state public defender.

Upon the administrative determination by the state public defender's office that the applicant is financially and otherwise eligible for representation, the state public defender is automatically appointed for that purpose without order of the trial court. Any applicant who contests a decision of the state public defender's office regarding eligibility may apply to the Minnesota Supreme Court for relief.

If the parents of a child are financially able to contribute to some or all of the costs of representation, they may be ordered to pay the State of Minnesota all or a portion of those costs.

Subd. 2. Exception for Juvenile Petty Offenders and Juvenile Traffic Offenders. The state public defender may, in its discretion, agree to represent a juvenile traffic offender or a juvenile petty offender who wants to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney if, after an administrative determination by the state public defender's office, the child is found financially eligible for representation.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

21.03 Appeal By Child

Subdivision 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Rule 21.03, subdivisions 1(A) and (B). In addition, a child shall be permitted to seek a discretionary appeal as provided for in Minn. R. Crim. P. 28.02, subdivision 3. A motion for a new trial is not necessary in order to appeal.

(A) *Final Orders.* Final orders include orders for:

(1) certification to adult court, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(2) continuance without adjudication and disposition in delinquency proceedings;

(3) adjudication and disposition in delinquency proceedings;

(4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;

(5) denial of motion for new trial;

(6) extended jurisdiction juvenile prosecution designation, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(7) conviction, disposition, and sentencing of an extended jurisdiction juvenile;

(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

(9) an order modifying a disposition;

(10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication;

(11) an order revoking extended jurisdiction juvenile status; and

(12) an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders.* A child may appeal from the following non-final orders:

(1) an order refusing or imposing conditions of release; and

(2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult.

Subd. 2. Procedure for Appeals.

(A) *Orders Revoking Extended Jurisdiction Juvenile Status and Orders Revoking the Stayed Adult Sentence of an Extended Jurisdiction Juvenile.* Probationer appeals under Rule 21.03,

subdivision 1(A)(11) and (12) shall be governed by the procedure provided for appeal from a sentence by Minn. R. Crim. P. 27.04, subdivision 3(4) and 28.05.

(B) *All Other Appealable Orders.* All other juvenile appeals shall proceed as follows:

(1) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days after service of the notice of filing of the appealable order upon the child's counsel by the court administrator as provided in Rule 28.

(2) *Notice of Appeal and Filing.* The appellant shall file the following documents with the clerk of the appellate courts:

(a) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;

(b) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;

(c) a copy of the judgment or order appealed from; and

(d) the statement of the case as provided for by Minn. R. Civ. App. P. 133.03.

When the disposition is ordered in a county other than the one in which the child pled guilty or was found to have committed the offense(s), the appellant shall serve notice of appeal on the prosecuting attorney, court administrator, and court reporter in the county where the child pled guilty or was found to have committed the offense(s) as well as the prosecuting attorney, court administrator, and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minn. R. Civ. App. P. 103.01, subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

(3) *Transcript of Proceedings and Transmission of the Transcript and Record.* The Minnesota Rules of Civil Appellate Procedure shall govern the transcription of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here:

(a) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

(b) For parties represented by the state public defender, payment for transcripts will be made after receipt of the transcripts.

(c) If the parties have stipulated to the accuracy of a transcript of video or audio exhibits and made the transcript part of the district court record, it becomes part of the record on appeal, and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

(4) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(a) Extended Jurisdiction Juvenile and Certification Determinations.

(i) The appellant shall serve and file the appellant's brief and addendum within thirty (30) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and addendum within thirty (30) days after the filing of the notice of appeal.

(ii) The appellant's brief shall contain a statement of the procedural history.

(iii) The respondent shall serve and file the respondent's brief and addendum, if any, within thirty (30) days after service of the brief of appellant.

(iv) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

(b) Briefs For Cases Other Than Extended Jurisdiction Juvenile and Certification Determinations.

(i) The appellant shall serve and file the appellant's brief and addendum within forty-five (45) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and addendum within forty-five (45) days after the filing of the notice of appeal.

(ii) The appellant's brief shall contain a statement of the procedural history.

(iii) The respondent shall serve and file the respondent's brief and addendum, if any, within thirty (30) days after service of the brief of appellant.

(iv) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

Subd. 3. Stay Pending Appeal.

(A) *Generally.* Pending an appeal, a stay may be granted by the juvenile court or the court of appeals. A motion for stay initially shall be presented to the juvenile court.

In cases certified to adult court, if a stay was granted by the juvenile court, the district court shall stay further adult criminal proceedings pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted, conditions of release must be set pursuant to Rule 21.03, subdivision 4(B).

(B) *Placement Pending Appeal.*

(1) Upon Certification. If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minn. R. Crim. P. 6.02, and detention in an adult facility shall be presumed.

(2) Other Cases. If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statutes, section 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the trial court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification

of the conditions of release pending review may be made to the court of appeals. The motion shall be determined upon such documents and portions of the record as the parties shall present. The court of appeals may order the release of a child with or without conditions, pending disposition of the motion. The motion shall be determined on an expedited basis.

(B) *Conditions of Release.* Minn. R. Crim. P. 6.02 shall govern conditions of release upon certification. If a stay is granted under Rule 21.03, subdivision 3 of this rule, Minnesota Statutes, section 260B.176, shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The trial court shall make written findings on each of the above factors. The trial court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the trial court in determining the disposition imposed in juvenile proceedings.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

21.04 Appeal by Prosecuting Attorney

Subdivision 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

(A) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;

(B) denial of a motion for certification or denial of a motion for designation as an extended jurisdiction juvenile prosecution;

(C) denial of a motion to revoke extended jurisdiction juvenile status following an admission of a violation of probation or a determination that a violation of probation has been proven;

(D) denial of a motion to revoke the stay of the adult sentence of an extended jurisdiction juvenile following an admission of a violation of probation or a determination that a violation of probation has been proven;

(E) pretrial orders, including suppression orders;

(F) orders dismissing the charging document for lack of probable cause when the dismissal was based solely on a question of law; and

(G) a continuance ordered in contravention of Minnesota Statutes, section 260B.198, subdivision 7.

Appeals from disposition or sentence shall only include matters that arose after adjudication or conviction. In addition to all powers of review presently existing, the appellate court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Rule 15.05, subdivisions 2 and 3.

Subd. 2. Attorney Fees. The child shall be allowed reasonable attorney fees and costs incurred for appeal. The child's attorney fees and costs shall be paid by the governmental unit responsible for prosecution of the case.

Subd. 3. Procedure for Appeals.

(A) Prosecutorial appeals under Rule 21.04, subdivision 1(A), (B), and (F), shall be governed by Rule 21.03, subdivision 2.

(B) Prosecutorial appeals under Rule 21.04, subdivision 1(C) and (D) shall be governed by the procedure provided for appeal from a sentence by Minn. R. Crim. P. 27.04, subdivision 3(4) and 28.05.

(C) Prosecutorial appeals under Rule 21.04, subdivision 1(E) shall proceed as follows:

(1) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within twenty (20) days after notice of entry of the appealable order is served upon the prosecuting attorney by the court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(2) *Notice of Appeal and Filing.* Rule 21.03, subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney. If a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

(3) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(a) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

(b) The appellant's brief shall contain a statement of the procedural history.

(c) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 4. Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for twenty (20) days to allow time to perfect the appeal.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Rule 5, or, for children certified to adult court, Minn. R. Crim. P. 6.02, subds 1 and 2. The trial court shall consider whether

the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

Subd. 6. Cross-Appeal by Child. Upon appeal by the prosecuting attorney, the child may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the appellate courts and the trial court administrator together with proof of service on the prosecuting attorney. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting attorney. Failure to serve the notice does not deprive the court of appeals of jurisdiction over a child's cross-appeal but is ground for such action as the court of appeals deems appropriate, including dismissal of the cross-appeal.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective July 1, 2015.)

21.05 Appeal by Parent(s), Legal Guardian or Legal Custodian of the Child

A parent, legal guardian, or legal custodian who participated separately pursuant to Rule 2.04, subdivision 3 may appeal from a disposition.

A parent, legal guardian, or legal custodian who is indigent may apply to the office of the state public defender for legal representation.

Parents' right to appeal is limited to cases where they have a liberty or property interest involved and their interest is adverse to that of the child.

The procedure for appeals by a parent, legal guardian, or legal custodian shall be governed by Rule 21.03, subdivision 2.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

21.06 Certified Questions to the Court of Appeals

After adjudication or sentencing, or before hearing on a motion to dismiss, the trial court may report any question of law which is important and doubtful to the court of appeals, if the child requests or consents. Upon report of the question all further district court proceedings shall be stayed. Other cases pending in the trial court which involve or depend on the same question shall also be stayed if a stay is requested or consented to by the juvenile involved.

The aggrieved party shall file a brief with the court of appeals and serve it on all parties within fifteen (15) days of the trial court's report of the question. Other parties shall have eight (8) days to file responsive briefs. The court of appeals shall expedite its decision on certified questions.

21.07 Time for Issuance of Decision

All decisions regarding appeals of certification determinations pursuant to Rule 18.07 or extended jurisdiction juvenile determinations pursuant to Rule 19.07 shall be issued within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure. The

court of appeals shall issue its decision in all other appeals within ninety (90) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

(Added effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

Comment--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or by petitioning for accelerated review pursuant to Minn. R. Civ. App. P. 118.

The scope of review shall be pursuant to Minn. R. Civ. App. P. 103.04.

Minn. R. Juv. Del. P. 21.03 subd 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn. R. Crim. P. 27.04 subd 3(4) and 28.05 subd 2. An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (a) or (b), is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1.

A child's representation by the public defender is governed by Minnesota Statutes, chapter 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

The parents or the child may be required to contribute to some or all of the costs of representation. See Minn. R. Juv. Del. P. 3.06 subd 2. See also Minnesota Statutes 2002, section 260B.331, subdivision 5.

Minn. R. Juv. Del. P. 21.03 subd 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn. R. Civ. App. P. 110.02 shall govern partial transcripts.

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn. R. Juv. Del. P. 18.07. If a stay is granted, the child will be detained in a juvenile facility if detention is necessary. If the stay of the certification order is not granted and detention is necessary, the child will more likely be detained in an adult facility pending the appeal.

Minn. R. Juv. Del. P. 21.04 subd 1(D), which allows prosecutors to appeal orders dismissing a charging document for lack of probable cause when dismissed solely on a question of law, is based on In re Welfare of C.P.W., 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

Rule 22. Substitution of Judge

22.01 Before or During Trial

If by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

22.02 After Verdict or Finding of Guilt

If by reason of absence, death, sickness, or other disability, the judge before whom the child has been tried is unable to perform the duties to be performed by the court after a verdict or finding

of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial.

22.03 Notice to Remove

Subdivision 1. Service and Filing. The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the child's counsel or the prosecuting attorney receives written notice, or oral notice in court on the record, of which judge is to preside at the trial or hearing but, in any event, not later than the commencement of the trial or the hearing.

Subd. 2. Removal of Presiding Judge. No notice shall be effective against a judge who has already presided at the trial, probable cause hearing, or other evidentiary hearing of which the party had notice, except where a party shows cause why a judge should be removed. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004.)

22.04 Assignment of New Judge

Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Comment--Rule 22

This rule is modeled after Minn. R. Crim. P. 26.03 subd 14. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness... [T]o perform its high function in the best way, 'justice must satisfy the appearance of justice.'" 349 U.S. at 136 citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29

L.Ed. 647 (1970). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 23. Referee

23.01 Authorization to Hear Cases

A referee may hear matters as authorized by statute.

23.02 Objection to Assignment of Referee

The child's counsel or the prosecuting attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004.)

23.03 Notice to Remove a Particular Referee

The child's counsel or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under Rule 22. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

23.04 Transmittal of Findings

Upon the conclusion of a hearing, the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to the child, the child's counsel, the child's parent(s), legal guardian or legal custodian and their counsel, the prosecuting attorney and to any other person that the court may direct.

23.05 Review

Subdivision 1. Generally. A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to Rule 28.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee. The prosecuting attorney is not entitled to a review on any pretrial findings by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

Subd. 4. The Court. The judge may grant a review at any time before confirming the findings and recommendations of the referee.

Subd. 5. Procedure. A review by a judge may be of the verbatim record or de novo in whole or in part.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

23.06 Order of the Court

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to Rule 23.05.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

Comment--Rule 23

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 24. Guardian Ad Litem

24.01 Appointment

(A) Except as provided in Rule 24.01 (B) the court shall appoint a guardian ad litem, to act in place of a parent, legal guardian or legal custodian to protect the best interests of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

(1) counsel has been appointed or is otherwise retained for the child, and

(2) the court finds that the best interests of the child are otherwise protected.

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

Rule 24.02 General Responsibilities of Guardians Ad Litem

In every juvenile delinquency court case in which a guardian ad litem is appointed, the guardian ad litem shall:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

(Added effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005.)

24.03 Guardian Ad Litem Not Counsel For Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

Rule 25. Notice

25.01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Electronic Transmission and Notice by Telephone

Subdivision 1. Summons. A summons is a document personally served on a person directing that person to appear before the court at a specified time and place. If the person summoned fails to appear, the court may issue an arrest warrant or, for the child, a warrant for immediate custody.

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed, or electronically transmitted as authorized by the State Court Administrator, by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears pursuant to the mailed or electronically transmitted notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted unless grounds exist under Rule 4.03.

Subd. 3. Oral Notice on the Record. The court may schedule further proceedings by oral notice to all persons present. Oral notice on the record shall be sufficient notice to all persons present. Any person not present who is entitled to notice, shall receive written notice.

Subd. 4. Detention Hearings: Service by Electronic Transmission or Notice by Telephone Permitted.

(A) *Service By Electronic Transmission.* If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall ensure that the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s), or spouse of the child receives notice that the child is in custody, and notice of the detention hearing. The court administrator shall also provide to the Office of the Public Defender or the child's attorney copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Defense counsel shall have immediate and continuing access to the child. The notice in lieu of summons and copies of the reports may be provided by electronic transmission, mailed notice, or hand delivery.

(B) *Notice By Telephone.* If the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s) or spouse of the child has not received notice of the time and place of the detention hearing and effective service by electronic transmission, mail, or hand delivery of the notice in lieu of summons is not possible, the court administrator may provide notice of the time and place of the detention hearing by telephone call.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective December 1, 2012; amended effective July 1, 2015.)

25.02 Content

Any summons or notice in lieu of summons shall include:

(A) a copy of the charging document, court order, motion, affidavit or other legal documents, filed with the court which require a court appearance;

(B) a statement of the time and place of the hearing;

(C) a brief statement describing the purpose of the hearing;

(D) a brief statement of rights of the child and parents;

(E) notice to the child and parent that a failure to appear in court could result in a warrant; and

(F) such other matters as the court may direct.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005.)

25.03 Procedure for Notification

Subdivision 1. First Notice. After a charging document has been filed, the court administrator shall schedule a hearing as required by these rules. A notice in lieu of summons shall be served by first class mail, or electronically transmitted as authorized by the State Court Administrator, on the following:

(A) child and parent(s) or person(s) with custody of the child; and

(B) child's counsel, prosecuting attorney, spouse of child and their counsel.

The court may waive notice to the parent(s), legal guardian, legal custodian, or spouse of the child if it would be in the child's best interest to proceed without their presence.

Subd. 2. Personal Service. If the child and/or parent(s) fail to appear in response to one or more notices in lieu of summons served by mail or electronic transmission, a summons may be served personally in the manner provided by Minnesota law. The summons shall advise the person served that a failure to appear may result in the court issuing a warrant for arrest.

Subd. 3. Warrant for Arrest or Immediate Custody. A warrant for arrest or immediate custody may be issued by the court for a child or parent(s) who fail to appear in response to a summons which has been personally served or where reasonable efforts at personal service have been made.

Subd. 4. Timing. A summons shall be personally served at least five (5) days before the hearing. A notice in lieu of summons shall be mailed or electronically transmitted at least eight (8) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:

(1) that the summons was served;

(2) the person on whom the summons was served; and

(3) the date, time, and place of service.

(B) *Service by Mail or Electronic Transmission.* On or before the date set for appearance, the person who served notice in lieu of summons by mail or electronic transmission shall enter in the court record:

(1) the name of the person to whom the summons or notice was sent;

(2) the date the summons or notice was sent; and

(3) whether the summons or notice was sent by first class mail, certified mail, or electronic transmission.

(C) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a document with the court or make an entry in the court record stating:

(1) the name, address and telephone number of the person who was contacted with notice of the detention hearing;

(2) the date and time of the telephone call or the efforts to do so; and

(3) the reason why notice in lieu of summons was not sent by First Class Mail or other authorized means.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective December 1, 2012; amended effective July 1, 2015).

25.04 Waiver

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Comment--Rule 25

Pursuant to Minnesota Statutes 1994, section 260.141, subdivision 1, notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn. R. Civ. P. 4.02, by mail with an acknowledgement returned to the court. That was not the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and charging document by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgment or by personal service. The legislature has since amended Minnesota Statutes, section 260.141, subdivision 1, to comport with this rule. Minnesota Laws 1996, chapter 408, article 6, sections 3 and 12; see Minnesota Statutes 2002, section 260B.152, subdivision 1. The rule also recognizes that notice may be sent by electronic transmission where authorized.

This rule allows for notice of a detention hearing to be provided by telephone call when, given the time remaining before the detention hearing, mailed or electronically transmitted notice in lieu of summons would not be effective. Notice by telephone is not permitted for any other type of hearing.

Historically, there have been some informal service methods for service of the prosecuting attorney and the public defender by each other and by the court, which were instituted for efficiency and cost-effectiveness. However, where the rules require a specific method of service, these informal methods of service may not be used. See City of Albert Lea v. Harrer, 381 N.W.2d 499 (Minn. Ct. App. 1986) (stating "[t]he clerk and the city attorney cannot agree to ignore the rules").

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

Rule 26. Subpoenas

26.01 Motion or Request for Subpoenas

On the court's own motion or at the request of the child's counsel or the prosecuting attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

Counsel for the parent(s), legal guardian and legal custodian of the child have the right to request the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing after the allegations of the charging document have been proved.

26.02 Expense

The fees and mileage of witnesses shall be paid at public expense if the subpoena is issued by the court on its own motion or at the request of the prosecuting attorney.

If a subpoena is issued at the request of the child's counsel or counsel for the parent(s), legal guardian, or legal custodian, and the child or parent(s) of the child are unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense, upon approval by the court, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay. All other fees shall be paid by the requesting person unless otherwise ordered by the court.

Comment--Rule 26

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 27. Motions

27.01 Motions to be Signed

Every motion shall be in writing, state with particularity the grounds, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

27.02 Service of Motions

Subdivision 1. When Required. Every written motion along with any supporting documents shall be served on the child, the child's counsel, the prosecuting attorney and the parent(s), legal guardian or legal custodian of the child.

Subd. 2. How Made. The moving party shall serve the other parties. If the other parties are represented by counsel, the moving party shall serve the other parties' counsel unless the court orders otherwise. Service of motions may be made by personal service, by mail, or electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Service by mail shall be complete upon mailing to the last known address of the person to be served. Service by authorized electronic means through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

Subd. 3. Time. Any motion required by this rule to be served, along with any supporting documents, shall be served at least three (3) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than three (3) days before it is to be heard.

(Amended effective December 1, 2012; amended effective July 1, 2015).

Rule 28. Notice of Orders or Judgments

Within five (5) days of filing of a written order or decision or entry of a judgment, the court administrator shall serve a copy of the written order on the child, the child's counsel, prosecuting attorney, probation officer, the parent(s), the legal guardian or legal custodian of the child and their counsel. The order shall be accompanied by a notice of filing, which shall include notice of the right to appeal a final order pursuant to Rule 21. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.)

Rule 29. Recording

29.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic reporter. If the recording is made by an electronic reporter, any requested transcripts shall be prepared by personnel assigned by the court.

29.02 Availability of Transcripts

Subdivision 1. Child's Counsel and Prosecuting Attorney. Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court may approve, shall be made available to the child's counsel or the prosecuting attorney upon written request to the court reporter.

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian. Transcripts of hearings for use at dispositional hearings, for appeal from disposition hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to Rule 2.04, subdivision 3. Applications for transcripts shall be made to the court in writing or on the record.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003.)

29.03 Expense

If the person requesting a transcript is unable to pay the preparation cost, the person may apply to the court for an order directing the preparation and delivery of the transcript to the person requesting it, at public expense. Depending on the ability of the person to pay, the court may order partial reimbursement for the cost of transcript.

Comment--Rule 29

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

Rule 30. Records

30.01 Generally

Subdivision 1. Records Defined. Juvenile court records include:

(A) all documents filed with the court;

(B) all documents maintained by the court;

(C) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials; and

(D) as relates to delinquency matters, all documents maintained by juvenile probation officers, county home schools and county detention agencies.

Subd. 2. Duration of Maintaining Records. The juvenile court shall maintain records as required by Minnesota Statute.

30.02 Availability of Juvenile Court Records

Subdivision 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules. Access to all reporter's tapes and electronic recordings shall be governed by the Rules of Public Access to Records of the Judicial Branch. Other than for criminal justice and other government agencies, juvenile delinquency records in proceedings that are public under Minnesota Statutes, section 260B.163, subdivision 1, shall not be "remotely accessible," as defined in Rule 8, subdivision 2 of the Rules of Public Access to Records of the

Judicial Branch, but may be made accessible in either electronic form or paper form at the court facility as permitted by Rule 8. Criminal justice and other government agencies shall have access to juvenile court records as permitted by Rule 8, subdivision 4, of the Rules of Public Access to Records of the Judicial Branch.

Subd. 2. No Order Required.

(A) *Court and Court Personnel.* Juvenile court records shall be available to the court and court personnel without a court order.

(B) *Child's Counsel, Guardian Ad Litem, and Counsel for the Child's Parent(s), Legal Guardian, or Legal Custodian.* Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

(1) the child's counsel and guardian ad litem appointed in the delinquency proceeding;

(2) counsel for the child's parent(s), legal guardian or legal custodian subject to restrictions on copying and release imposed by the court.

(C) *Prosecuting Attorney.* Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney.

(D) *Other.* The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subd. 3. Court Order Required.

(A) *Person(s) with Custody or Supervision of the Child, and Others.* The court may order juvenile court records to be made available for inspection, copying, disclosure or release, subject to such conditions as the court may direct, to:

(1) a representative of a private agency providing supervision or having custody of the child under order of the court; or

(2) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order; or

(3) any other person having a legitimate interest in the child or in the operation of the court.

(B) *Public.* A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

(1) in the best interests of the child; or

(2) in the interests of public safety; or

(3) necessary for the functioning of the juvenile court system.

(C) *Disclosure Prohibited.* The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock

midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011; amended effective May 14, 2014; amended effective July 1, 2015.)

Comment--Rule 30

Legal records as defined in Minnesota Statutes 2002, section 260B.171, subdivision 1, are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minnesota Statutes 2002, section 260B.171, subdivision 4, provides exceptions to public access of "legal records," arising under Minnesota Statutes 2002, section 260B.163, subdivision 1, delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minnesota Statutes 2002, section 245A.04, subdivision 3, paragraph (d), which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minnesota Statutes 2002, sections 611A.03, 611A.04, 611A.06, and 629.73, which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minnesota Statutes 2002, section 609.02, if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.

Pursuant to Minnesota Statutes 2002, section 260B.171, subdivision 2, the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for felony- or gross misdemeanor-level offenses. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

References in this rule to "counsel for the parent(s), legal guardian, or legal custodian" include the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minnesota Statutes 2002, section 260B.171, subdivision 3, paragraph (a). When the probation officer transmits a disposition order to a school, the probation officer shall notify the parent, legal guardian or legal custodian that this information has been sent to the juvenile's school.

Rule 31. Timing

31.01 Computation

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Delinquency Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, a legal holiday, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer

system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's and Lincoln's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State, and a day that the United States Mail does not operate.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective July 1, 2015.)

31.02 Additional Time After Service by Mail or Electronic Service Late in the Day

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period. If service is made by electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective July 1, 2015.)

Rule 32. Electronic Service, Filing, and Signature

32.01 Service

Except where personal service is required by these rules, service shall be made by any means authorized by law, including electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Any notices or copies required to be provided under these rules may also be provided electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts.

(Added effective July 1, 2015.)

32.02 Filing

Except as otherwise specified in these rules, documents may be filed electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Notwithstanding Rule 14 of the General Rules of Practice for the District Courts, documents prepared and presented to the court during a court proceeding, including but not limited to a signed guilty plea petition or signed waiver of counsel, are not required to be filed electronically.

(Added effective July 1, 2015.)

32.03 Signature

Any signature required under these rules may be applied electronically.

(Added effective July 1, 2015.)

JUVENILE DELINQUENCY FORMS

Effective September 1, 2003
With amendments received through August 1, 2008

TABLE OF FORMS

Introductory Statement

Form

1. [Deleted]
2. Notice of the Rights of Victims in Juvenile Court
3. Notice in Lieu of Summons
4. Summons
5. Prosecutor's Request for Disclosure
6. Prosecutor's Notice of Evidence and Identification Procedures
7. Petition to Proceed Pro Se in Juvenile Delinquency Proceeding
8. Statement of Rights: Juvenile Delinquency Proceedings
9. Statement of Rights: Juvenile Petty Offender Proceedings
10. Statement of Rights: Juvenile Traffic Offender Proceedings
11. Statement of Rights: Juvenile Probation Revocation
12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case
13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case
14. Waiver of Right to Contested Hearing in a Presumptive Certification Case
15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case
16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter
17. EJJ Adult Stayed Sentence

Introductory Statement

The following forms are provided as an aid to practitioners and the court in the juvenile justice system. The forms are not mandatory, but shall be accepted by the court if offered by any party or counsel for their designated purpose. The Advisory Committee on Juvenile Delinquency Rules strongly recommends that Forms 12 through 16 be used in all felony level or enhanceable cases. A sample petition may be found on the Minnesota Judicial Branch Web site.

Form 2. Notice of the Rights of Victims in Juvenile Court

NOTICE OF THE RIGHTS OF VICTIMS IN JUVENILE COURT

1. Right to Participation

Minnesota law (Minn. Stat. § 260B.163, subd. 1 (2002) and § 611A.01, et seq. (2002)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

a. The right to have input in a pretrial diversion program decision;

b. The right to object to the proposed disposition and a plea agreement;

c. The right to request the prosecutor make a demand for a speedy trial;

d. The right to be present in court at the time of the disposition hearing (sentencing); and

e. The right to submit an impact statement to the judge orally or in writing, at the time of disposition (sentencing) hearing.

2. Right to Notification

You have a right to be notified of certain information such as the following:

a. The contents of any plea agreement;

b. The schedule changes in court proceedings if you have been subpoenaed or requested to testify;

c. The information regarding the detention hearing of an arrested or detained juvenile;

d. The final disposition of the case;

e. The transfer of the juvenile to a less secure correctional facility;

f. The release of the juvenile from a custodial institution; and

g. The escape and apprehension of the juvenile from a custodial institution.

3. Right to Protection

As a victim and/or witness, you have certain rights to protection such as the following:

a. The right to a safe and secure waiting area during the court process, if available;

b. The right to ask a law enforcement agency to withhold public access to data revealing your identity;

c. The right not to give your home or business address in open court; and

d. The right not to be retaliated against by employers if you are called to testify as a victim or witness.

4. Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may ask the court to order the juvenile to pay restitution under Minn. Stat. § 611A.04. If the juvenile

fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

5. Additional Rights

In cases involving sex offenses, you have the right to be notified whether the offender has any sexually transmitted diseases, and may also have the right to ask that the offender submit to HIV-testing.

TERMS USED IN JUVENILE COURT PROCEEDINGS

DETENTION

A juvenile can be detained in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, at an adult jail, or in the juvenile's home subject to electronic home monitoring. Most juveniles must appear before the court within 36 hours of being taken into custody for a detention hearing.

ARRAIGNMENT

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

PRETRIAL HEARING

In some cases, the judge orders a pretrial hearing to decide issues of law and allow the parties the opportunity to settle the case before trial.

TRIAL

A juvenile has the same legal protections during trial as an adult charged with a crime. Most juvenile trials are held before a judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

DISPOSITION

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and/or victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

Form 3. Notice in Lieu of Summons

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ _____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of: **NOTICE IN LIEU OF SUMMONS**

_____

Child Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

- ☐ juvenile traffic offender
- ☐ juvenile petty offender
- ☐ juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

YOU ARE entitled to have a summons requiring your appearance served upon you. The Court has directed that this notice be mailed to you instead of issuing a summons. However, if you do not appear at the hearing, a summons will be issued.

Attached is a copy of the:

- ☐ charging document
- ☐ affidavit
- ☐ court order
- ☐ other: _____
- ☐ motion

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. PLEASE READ ATTACHED ITEMS CAREFULLY.

DATE: BY THE COURT:

BY: _____ _____

Deputy Court Administrator

Served by Regular Mail:

DATE: BY: _____

(11/02)

Form 4. Summons

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ _____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of: **SUMMONS**

_____

Child Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

□ juvenile traffic offender

□ juvenile petty offender

□ juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

Attached is a copy of the:

□ charging document □ affidavit

□ court order □ other _____

□ motion

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. PLEASE READ ATTACHED ITEMS CAREFULLY.

TAKE NOTICE THAT if you fail to appear in response to this Summons, the Court may: (1) issue a warrant for your arrest; and (2) conduct a hearing without your presence and grant appropriate relief. Further information concerning the date and consequences of later hearings, if any, may be obtained for the Court by a request in writing.

DATE: BY THE COURT:

BY: _____ _____

Deputy Court Administrator

□ Served by Certified Mail

□ Served Personally

DATE: _____ BY: _____

(11/02)

Form 5. Prosecutor's Request for Disclosure

STATE OF MINNESOTA	**DISTRICT COURT - JUVENILE DIVISION**
COUNTY OF _____	_____ **JUDICIAL DISTRICT**
In the Matter of the Welfare of:	**PROSECUTOR'S REQUEST FOR DISCLOSURE**
_____	Court File No. _____
Child	

Pursuant to Rule 10.05 of the Minnesota Rules of Juvenile Procedure, the County Attorney requests the child to make disclosure of the following items, which the child intends to introduce into evidence at the trial, certification, or extended jurisdiction juvenile hearing:

(1) documents and tangible objects;

(2) reports of examinations and tests;

(3) notice of defenses;

(4) names, addresses, and record of criminal convictions or delinquency adjudications of child's witnesses;

(5) statements of child's witnesses;

(6) details of and witnesses to the defense of alibi; and

(7) record of child's prior proven or admitted delinquency offenses.

This request for disclosure incorporates by reference the language of Rule 10.05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule.

Date: _____ _____

_____ County Attorney

Form 6. Prosecutor Notice of Evidence and Identification Procedures

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of: **PROSECUTOR NOTICE OF EVIDENCE AND IDENTIFICATION PROCEDURES**

_____

Child Court File No. _____

TO: THE ABOVE-NAMED CHILD AND COUNSEL FOR CHILD:

Pursuant to Rule 10.02 of the Minnesota Rules of Juvenile Procedure, you are advised that in the above-captioned case, the Prosecutor has:

- ☐ Evidence obtained as a result of a search, search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping;
- ☐ Confessions, admissions or statements in the nature of confessions made by the child;
- ☐ Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child;
- ☐ Identification procedures used during the investigation were:
  - ☐ Line-ups
  - ☐ Observations of the respondent
  - ☐ Exhibition of photographs
  - ☐ Other _____
  - ☐ None of above is known to the prosecution at this time; you will be notified if any is discovered.

Date: _____ _____

_____ County Attorney

(11/02)

Form 7. Petition to Proceed as Pro Se in Juvenile Delinquency Proceeding

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of: **PETITION TO PROCEED PRO SE IN JUVENILE DELINQUENCY PROCEEDING**

_____

Child Court File No. _____

My full name is _____ , and I am the child in the above-entitled action. I request the Court allow me to represent myself and state as follows:

1. I am___ years old. My date of birth is _____ . The last grade I attended in school is _____.
2. I have received and read the charging document in this matter.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of:

   _____

   committed on or about _____ in _____ County, Minnesota.
5. I have discussed my desire to represent myself with an attorney whose name is

   _____.
6. I (have) (have not) been a patient in a mental hospital.
7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
8. I (have) (have not) been ill recently.
9. I (have) (have not) recently taken pills or medicine.
10. I understand that I have the right to have an attorney represent me in these proceedings. I understand that if the Court grants my petition to represent myself, I will be responsible for preparing my case for trial and trying my case. I understand that I will be bound by the same rules as an attorney. I understand that if I fail to do something in a timely manner or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.
11. In making my decisions regarding the conduct of this case, I have the right to consult with standby counsel if one is assigned to this case.
12. I understand the Court will schedule a probable cause hearing if one has not already been held. At the probable cause hearing, I can request that the petition or indictment filed against me be dismissed for lack of probable cause. The preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.
13. I understand that I am entitled to a court trial. I further understand that I will conduct all phases of the trial, including but not limited to writing and filing motions, making arguments

to the Court, cross-examination of the witnesses for the prosecution, direct examination of my witnesses, making objections, opening statement and closing argument.

14. I understand I am entitled to require any witnesses I think are favorable to me to appear and testify at my trial by use of a subpoena.

15. I understand that a person who has a prior delinquency record can be given a longer out-of-home placement. The maximum statutory penalty the Court could impose if I am adjudicated delinquent is commitment to the Commissioner of Corrections until my 19th birthday. The maximum statutory penalty the court could impose if I am certified to adult court or prosecuted as an extended jurisdiction juvenile is commitment to the Commissioner of Corrections for a term as determined by the Minnesota Sentencing Guidelines.

16. I understand the Court may appoint a public defender to act as standby counsel in this case. However, I am under no obligation to seek advice from standby counsel. I understand that the role of standby counsel is as follows:

    a. Standby counsel will be physically present in the courtroom during all proceedings in my case.

    b. Standby counsel will respond to requests for advice from me. Standby counsel will not initiate such discussion.

    c. Support staff of the public defender, such as investigators, secretaries, law clerks, and legal service advisors will not be available to me.

    d. If I need investigative services, expert services, waivers of fees, research, secretarial services, or any other assistance, I must ask the Court for the relief or assistance I need. Such request is made pursuant to Minnesota Statutes, section 611.21.

    e. If I desire to conduct legal research, I will be expected to do it myself.

    f. Standby counsel will not be prepared to try my case on the trial date unless ordered to prepare to do so by the Court.

    g. Standby counsel will be present for all court appearances to consult with me if I request. Standby counsel will be seated either at the back of the courtroom or at counsel table, based on my wishes and the Court's order. In an effort to support my constitutional right to self-representation, standby counsel will not initiate motions, objections, arguments to the Court, or any other aspect of representation unless I have given approval to that specific aspect of representation.

    h. If I wish to give up my right to represent myself, I know the Court will not automatically grant my request. The Court will consider the following in granting or denying that request: the stage of the proceedings, whether standby counsel is prepared to take over, the length of the continuance necessary for standby counsel to assume representation, the prejudice to either party, and any other relevant considerations.

    i. If the Court grants my request to represent myself and orders standby counsel, the trial date may be continued if requested by the standby counsel.

    j. If the Court orders standby counsel to represent me after the trial has started and jeopardy has attached, the Court may grant a mistrial if requested by my new attorney and reset the trial date. It is solely up to the Court whether to grant a mistrial.

17. I have read the above two pages, discussed them with counsel, and I understand the rights and responsibilities I have in representing myself. In consideration of those rights and responsibilities, I want to give up my right to be represented by an attorney and will represent myself.

Date: _____ _____

Child

(11/02)

Form 8. Statement of Rights: Juvenile Delinquency Proceedings

STATEMENT OF RIGHTS

JUVENILE DELINQUENCY PROCEEDINGS

You have been charged with a delinquent act by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.

2. The right to be represented by an attorney. If you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s), legal guardian(s), or legal custodian(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.

3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.

4. If you plead not guilty, you have additional rights including:

a. The right to a trial before a judge;

b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);

c. The right to cross-examine witnesses called by the state;

d. The right to subpoena witnesses and present evidence on your own behalf; and

e. The right not to testify or to give an explanation of your actions.

5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your guilty plea unless you admit doing something that is against the law.

6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.

7. If you plead guilty or the judge finds you guilty, the judge may:

a. Counsel you and your parent(s), legal guardian(s) or legal custodian(s);

b. Place you on probation in your own home or a foster care facility under conditions established by the court;

c. Transfer your legal custody under court supervision and place you out of your home;

d. Transfer your legal custody by commitment to the Commissioner of Corrections;

e. Order restitution for any damage done to person(s) and/or property;

f. Order community work service and/or a fine up to $1,000;

g. Order special treatment or care for your physical or mental health;

h. Recommend to the Commissioner of Public Safety that your driver's license be canceled;

i. Require you to attend school until age 18 or completion of graduation requirements;

j. Order the Commissioner of Public Safety to revoke your driver's license or to delay the issuance or reinstatement of your driver's license if you committed a controlled substance offense while driving a motor vehicle;

k. Order an assessment of your need for sex offender treatment, and order that you undergo treatment, if you committed an offense involving criminal sexual conduct, interference with privacy, obscene or harassing telephone calls, or indecent exposure;

l. Prohibit you from living near the victim if you committed a criminal sexual conduct offense;

m. Consider imposition of additional consequences if a gun or dangerous weapon was involved;

n. Require you to submit a DNA sample if you have been charged with a felony; and/or

o. Require you to register as a predatory offender if you have been charged with a sexual offense or predatory offense.

8. If you plead guilty or the judge finds you guilty of a felony after your 14th birthday, this case may be used as a basis for additional jail or prison time if you are sentenced for another felony as an adult before your 25th birthday.

9. If you plead guilty or the judge finds you guilty of an offense, this case may be used as a basis to transfer any future felony-level case to adult court or treat it as an extended jurisdiction juvenile prosecution.

10. If you plead guilty or the judge finds you guilty of an offense and you are not a citizen of the United States, the plea or finding of guilt may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

11. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you guilty of the offense. At that time your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING OR ASK THE JUDGE DURING YOUR HEARING.

DATE:_____ _____

(Signature of Child)

DATE:_____ _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(05/14)

Published by the Revisor of Statutes under Minnesota Statutes, section 3C.08, subdivision 1.

Form 9. Statement of Rights: Juvenile Petty Offender Proceedings

STATEMENT OF RIGHTS

JUVENILE PETTY OFFENDER PROCEEDINGS

You have been charged with a petty offense by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
   a. The right to a trial before a judge;
   b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
   c. The right to cross-examine witnesses called by the state;
   d. The right to subpoena witnesses and present evidence on your own behalf; and
   e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
   a. Require you to pay a fine of up to $100;
   b. Require you to take part in a community service project;
   c. Require you to participate in a drug awareness program;
   d. Place you on probation for up to six months;
   e. Order you to undergo a chemical dependency evaluation and participate in an outpatient treatment program;
   f. Order restitution for any damage to person(s) and/or property; and/or
   g. Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate by the judge.
8. If you plead guilty or the judge finds you guilty of a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:

a. Send your driver's license or driving permit to the Commissioner of Public Safety who shall revoke it for one year or until your 18th birthday, whichever is longer.

b. Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.

c. If you do not have a driver's license or driving permit, the judge may order denial of your driving privileges for one year or until your 18th birthday, whichever is longer.

9. If you plead guilty to, or the judge finds you committed a third juvenile alcohol or controlled substance offense, and a chemical dependency evaluation recommends inpatient treatment, you have a right to appointment of a public defender or other counsel at public expense.

10. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____ _____

(Signature of Child)

DATE: _____ _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(11/02)

Form 10. Statement of Rights: Juvenile Traffic Offender Proceedings

STATEMENT OF RIGHTS

JUVENILE TRAFFIC OFFENDER PROCEEDINGS

You have been charged as a juvenile traffic offender by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
   a. The right to a trial before a judge;
   b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
   c. The right to cross-examine witnesses called by the state;
   d. The right to subpoena witnesses and present evidence on your own behalf; and
   e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
   a. Reprimand you and counsel you and your parent(s), legal guardian(s) or legal custodian(s);
   b. Continue the case for a reasonable period under such conditions governing your use and operation of motor vehicles or watercraft as the court may set;
   c. Require you to attend a driver improvement course;
   d. Recommend that the Commissioner of Public Safety suspend your driver's license;
   e. If you are found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of $100, the judge may recommend that the Commissioner of Public Safety cancel your driver's license until you are 18;
   f. Place you on probation in your own home under conditions set by the judge including reasonable rules relating to the operation and use of motor vehicles or watercraft;

g. Order restitution for any damage to person(s) and/or property;

h. Order community work service or a fine up to $1,000; and/or

i. Order a chemical assessment for alcohol-related driving offenses and charge $75.00 for the assessment.

8. Your parent(s), legal guardian(s) or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s) or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE:_____ _____

(Signature of Child)

DATE:_____ _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(05/14)

Form 11. Statement of Rights: Juvenile Probation Revocation

STATEMENT OF RIGHTS
JUVENILE PROBATION REVOCATION

A probation revocation is a hearing before a judge to decide if a juvenile violated a term or condition of probation, and if so, whether the judge should change the disposition.

You will be asked to admit or deny the allegations of the probation violation. You have the following rights:

1. You have the right to have an attorney represent you. You may have the right to an attorney appointed at public expense.

2. If you deny the allegations of the probation violation, you have a right to a hearing before a judge. The hearing must be held within seven days if you are removed from your home. If you are allowed to remain in your home pending the probation revocation hearing, the hearing must be held within a reasonable time. If you admit the probation violation, you give up your right to a probation revocation hearing.

3. Before the hearing, you are entitled to receive all the evidence of the probation violation that will be used against you, including probation revocation reports and all records relating to the proceedings.

4. At the probation revocation hearing, both you and the prosecuting attorney have the right to offer evidence, make arguments, subpoena witnesses, and call and cross-examine witnesses. You may testify in your own defense or remain silent throughout the hearing. You may present mitigating circumstances or other reasons why the probation violation, if proved, should not result in a change in the disposition order.

5. The probation violation must be proved by clear and convincing evidence. You have the right to appeal the decision of the court after a revocation hearing.

DATE: _____ _____

(Signature of Child)

DATE: _____ _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

(11/02)

Form 12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:

_____

Child

WAIVER OF RIGHT

TO CONTESTED HEARING IN AN EXTENDED JURISDICTION JUVENILE CASE

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____months in prison under the Minnesota Sentencing

   [range]

   Guidelines and applicable statutes.

2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____.

3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).

4. I understand that I have a right to an attorney.

5. The prosecutor has brought a motion for extended jurisdiction juvenile prosecution, and I understand I have a right to a hearing before a judge.

6. At that hearing, the prosecutor must show by clear and convincing evidence that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety. I have discussed the public safety factors with my attorney.

7. I understand I could present witnesses and evidence at that hearing.

8. I understand I could cross-examine all witnesses who testify for the state.

9. I understand I could present arguments against the extended jurisdiction juvenile prosecution.

10. I understand that by waiving my right to a hearing I agree that my case can proceed to a jury trial on the above-named offense(s). If I am found guilty, I will be subject to the penalties of both juvenile and adult court, including a stayed sentence under Minnesota Sentencing Guidelines and criminal statutes.

11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that if I violate the terms of the stayed adult sentence, I have a right to a hearing, but if the court finds the violation proven, I will be in the adult court system where a prison sentence

could be imposed. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

□ No promise of any agreement has been made to me.

□ The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find I represent a danger to the public safety if kept solely within the juvenile system and will order an extended jurisdiction juvenile prosecution.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if I remain in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have an extended jurisdiction juvenile hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:	**WAIVER OF RIGHT TO CONTESTED HEARING IN A NON-PRESUMPTIVE CERTIFICATION CASE**
_____ Child	Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is the prosecutor's burden to demonstrate to the judge by clear and convincing evidence that retaining my case in juvenile court does not serve public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

    □ No promise of any agreement has been made to me.

    □ The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if my case is kept in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____ _____
Child

DATE: _____ _____
Child's Attorney

(11/02)

Form 14. Waiver of Right to Contested Hearing in a Presumptive Certification Case

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of:

_____Child

WAIVER OF RIGHT TO CONTESTED HEARING IN A PRESUMPTIVE CERTIFICATION CASE

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was 16 or 17 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is my burden to show the judge by clear and convincing evidence that retaining my case in juvenile court serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification. I further understand that if I prevailed at the certification hearing, the court must order that my case proceed as an extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that the charged offenses presume an executed prison sentence. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

□ No promise of any agreement has been made to me.

□ The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if returned to the extended jurisdictional juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 15. Petition to Enter Plea of Guilty in an Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA	**DISTRICT COURT - JUVENILE DIVISION**
COUNTY OF _____	**_____ JUDICIAL DISTRICT**
In the Matter of the Welfare of:	**PETITION TO ENTER PLEA OF GUILTY IN EXTENDED JURISDICTION JUVENILE CASE**
_____ Child	Court File No. _____

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ [range] months in prison under the Minnesota Sentencing Guidelines and applicable statutes.
2. The offense(s) is alleged to have occurred on _____ and I was _____ years old at the time, having a date of birth of _____.
3. I understand the charge(s) against me in this case.
4. I understand that I have a right to an attorney.
5. I am represented by an attorney, and:
   a. I feel that I have had sufficient time to discuss my case with my attorney.
   b. I am satisfied that my attorney is fully informed as to the facts of this case.
   c. My attorney has discussed possible defenses that I may have.
   d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a jury trial, and at that trial I have the following rights:
   a. The right to be presumed innocent unless and until proven guilty beyond a reasonable doubt.
   b. The right to be present and cross-examine all witnesses brought by the prosecutor.
   c. The right to subpoena and bring in my own witnesses.
   d. The right to remain silent or testify in my own defense. I understand that if I choose to remain silent, my silence could not be used against me.
   e. The right to a unanimous verdict by the jury.
7. I understand that if I enter a plea of guilty to an offense, I give up the rights listed above in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.

   □ No promise of any agreement has been made to me.

   □ The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea, I have a right to withdraw my plea and anything said in court cannot be used against me. However, if the court accepts my guilty plea, there will be a disposition in juvenile court and an adult prison sentence will be stayed.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case. I understand that if the court finds I have violated the terms of the stayed prison sentence, the court can send me to prison.
12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand I could be on probation until my 21st birthday.
14. I understand that my plea may increase the penalties for future offenses, and this plea will be used to compute my adult criminal history score.
15. If I plead guilty and I am adjudicated for a "crime of violence," it may be illegal for me to possess any firearm.
16. If I plead guilty to a felony, I may be required to submit a DNA sample. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow the adult prison sentence if it is executed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is _____ years.
17. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
18. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
19. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
20. I (have) (have not) been a patient in a mental hospital.
21. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
22. I (have) (have not) been ill recently.
23. I (have) (have not) recently taken pills or medicine.
24. Based upon all of this information, I am choosing to waive or give up my right to have a jury trial.
25. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 9.
26. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____ _____

	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 16. Petition to Enter Plea of Guilty in a Juvenile Delinquency Matter

STATE OF MINNESOTA **DISTRICT COURT - JUVENILE DIVISION**

COUNTY OF _____ **_____ JUDICIAL DISTRICT**

In the Matter of the Welfare of: **PETITION TO ENTER PLEA OF GUILTY IN JUVENILE DELINQUENCY MATTER**

_____

Child Court File No. _____

1. My full name is _____. I am ___ years old, and my date of birth is _____. The last grade that I went through in school is _____ or I am currently attending the _____ grade in school.
2. I have received and read a copy of the charging document, and discussed it with my attorney.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of:

   _____

   committed on or about _____ in County, Minnesota._____
5. I am represented by an attorney, whose name is _____ and:
   a. I feel that I have had sufficient time to discuss my case with my attorney.
   b. I am satisfied that my attorney is fully informed as to the facts of this case.
   c. My attorney has discussed possible defenses that I may have.
   d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a trial before a judge, and at that trial I have the following rights:
   a. The right to be presumed innocent unless and until the prosecutor proves me guilty beyond a reasonable doubt.
   b. The right to be present and ask questions of all witnesses brought by the prosecutor.
   c. The right to subpoena and bring in my own witnesses.
   d. The right to testify on my behalf or remain silent. I understand if I choose to remain silent the court cannot use my silence against me.
7. I understand that if I plead guilty to an offense, I give up my right to a trial in this case, including the rights stated in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
   □ No promise of any agreement has been made to me.
   □ The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea:
    a. I have the right to withdraw my guilty plea and have a trial.
    b. Anything I said in court about my plea cannot be used against me.
11. I understand that if the court accepts my guilty plea, there will be a disposition or sentencing.
12. I understand that the court could place me on probation until my 19th birthday. During that time, the court may change the disposition.
13. I understand that the court can:
    a. Place me out of home;
    b. Require me to participate in education and/or treatment programs;
    c. Require me to do community work service and/or pay a fine;
    d. Require me to pay restitution;
    e. Order cancellation, revocation, or suspension of my driver's license; and/or
    f. Require me to meet school graduation requirements.
14. If I violate the conditions of probation or commit a new offense, I could be arrested and placed in detention.
15. If the court adjudicates me for the offense I am admitting, I will have a juvenile court record.
16. I understand this offense could be used against me if I commit a future felony-level offense and the prosecutor in that case wishes to move for extended jurisdiction juvenile or certify me to adult court.
17. If I am admitting a felony offense today, and the offense was committed after my 14th birthday, I understand it will be used to compute my adult criminal history score.
18. If I plead guilty and I am adjudicated for a "crime of violence," it may be illegal for me to possess any firearm.
19. If I plead guilty to a felony, I may be required to submit a DNA sample.
20. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
21. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
22. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
23. I understand that my plea may result in increasing the level of a future offense to a gross misdemeanor or felony.
24. I (have) (have not) been a patient in a mental hospital.
25. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
26. I (have) (have not) been ill recently.

28. I (have) (have not) recently taken pills or medicine.

29. I have read this petition to plead guilty and I understand it. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE: _____	_____
	Child
DATE: _____	_____
	Child's Attorney

(11/02)

Form 17 – EJJ Adult Stayed Sentence

State of Minnesota District Court

County | Judicial District | Case Number

State of Minnesota

vs.

_____, Defendant.

CRIMINAL JUDGMENT / WARRANT OF COMMITMENT

TERMS AND CONDITIONS OF SENTENCE Date Pronounced: _____

Charge Resulting in Plea or Finding of Guilt	Minn. Stat. §	Count	Level of Offense

Offense Date: | Non-Conviction Dispositions: Count Number(s): _____ ☐ Dismissed ☐ Acquitted

☐ **FELONY LEVEL SENTENCE**

☐ Imposition of sentence is stayed for _____ years, _____ months, and _____ days; **OR**

☐ Commitment to the custody of the Commissioner of Corrections for _____ years, _____ months, and _____ days. The sentence consists of two parts: a minimum term of imprisonment equal to two-thirds (2/3) of the total executed sentence, and a maximum supervised release term equal to one-third (1/3) of the total executed sentence.

☐ Execution of this sentence is stayed for _____ years, _____ months.

☐ Execution of this sentence is stayed until the EJJ offender's 21st birthday on the condition that the EJJ offender not violate the terms of the juvenile disposition and not commit a new offense.

☐ Defendant shall pay a fine of $_____, of which $_____ is stayed for _____ years, _____ months.

☐ Other _____

☐ **MISDEMEANOR** ☐ **GROSS MISDEMEANOR LEVEL SENTENCE**

☐ Stay of imposition for _____ years, _____ months; **OR**

☐ Sentenced to jail for _____ days at this location:_____. In lieu of jail, may serve: _____. ☐ Execution of this sentence is stayed for _____ years, _____ months.

☐ Defendant shall pay a fine of $_____, of which $_____ is stayed for _____ years, _____ months.

☐ **JAIL CREDIT:** Credit for time spent in custody: _____ days.

☐ **SENTENCE DEPARTURE:** Sentence departs from the presumptive sentence under the Minnesota Sentencing Guidelines. **Attach a departure report.** Send a copy of this form and the attached departure report to the Minnesota Sentencing Guidelines Commission.

☐ **PROBATION:** The Defendant is placed on probation.

FINANCIAL CONDITIONS

The following financial conditions also apply to Case#_____ Count(s)_____.
Fine Imposed $_____ Fine Stayed $_____
Restitution jointly and severally with: _____.

☐ Restitution $_____

☐ Surcharge $_____

☐ Law Library $_____

☐ Court Costs $_____

☐ Chem Fee $_____

☐ Other: _____ $_____

☐ Other: _____ $_____

TOTAL $ _____

ADDITIONAL CONDITIONS

☐ _____ days in jail as a condition of a stayed sentence. In lieu of jail, defendant may: _____.

☐ Commit no felonies, gross misdemeanors or misdemeanors.

☐ No alcohol/illegal drug use. ☐ Enforce with random drug testing.

☐ Complete these evaluations/programs and follow recommendations:

☐ Domestic Abuse ☐ Chemical Dependency

☐ Sex Offender ☐ Psychological Evaluation/ Counseling

☐ Other: _____

☐ Other: _____

☐ _____ hours community service by _____.

☐ Other: _____

☐ Other: _____

☐ Other: _____

COMMENTS:

Sentencing Judge: Date:

I understand the terms and conditions of my sentence:

Defendant: Date:

(Added effective November 14, 2003.)

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Effective September 1, 2019
With amendments effective January 1, 2022

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A. SCOPE AND PURPOSE

RULE 1. SCOPE AND PURPOSE

Rule 1.01. Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 2.01(19).

Rule 1.02. Purpose

These rules establish uniform practice and procedure for matters brought to court under the juvenile protection provisions or the child in voluntary foster care for treatment provisions of the Juvenile Court Act. Minnesota Statutes, sections 260C.001 and 260D.01, paragraph (e) describe the purposes of those provisions of the Juvenile Court Act. These rules are additionally intended to:

(a) secure for each child under the jurisdiction of the court a home that is safe and permanent;

(b) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the procedures;

(c) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;

(d) ensure a coordinated decision-making process;

(e) reduce unnecessary delays in court proceedings;

(f) encourage the involvement of parents and children in the proceedings; and

(g) ensure compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

2019 Advisory Committee Comment

Rule 1 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 1 are not intended to substantively change the rule's meaning.

Rule 1.02 is amended to eliminate provisions that either duplicate or resemble statutory language describing the purposes of juvenile protection matters. The revised Rule 1.02 cites the statutory provisions in which the legislature has described the purposes of the juvenile protection and child in voluntary foster care for treatment provisions of the Juvenile Court Act. The purposes that remain listed in Rule 1.02 reflect the Minnesota Judicial Branch's intent to implement the Juvenile Court Act's provisions.

RULE 2. DEFINITIONS

Rule 2.01. Definitions

The terms used in these rules shall have the following meanings:

(1) **"Active efforts"** is defined in 25 C.F.R. section 23.2, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 1a.

(2) **"Adjudicated father"** means an individual determined by a court, or pursuant to a recognition of parentage under Minnesota Statutes, section 257.75, to be the biological father of the child.

(3) **"Affidavit"** is defined in Rule 15 of the General Rules of Practice for the District Courts.

(4) **"Alleged father"** means an individual claimed by a party or participant to be the biological father of a child.

(5) **"Child"** means an individual under 18 years of age. "Child" also includes individuals under age 21 who are in foster care pursuant to Minnesota Statutes, section 260C.451.

(6) **"Child-placing agency"** is defined in Minnesota Statutes, section 260C.007, subdivision 7.

(7) **"Child custody proceeding"** means any judicial action within the definition of a "child custody proceeding" under the Indian Child Welfare Act, 25 U.S.C. section 1903(1) and 25 C.F.R. section 23.2, or a "child placement proceeding" under the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 3.

(8) **"Child support"** means an amount for basic support, child care support, and medical support pursuant to:

(a) the duty of support ordered in a parentage proceeding under the Parentage Act, Minnesota Statutes, sections 257.51 to 257.74;

(b) a contribution by parents ordered under Minnesota Statutes, section 256.87; or

(c) support ordered under Minnesota Statutes, chapter 518A, 518B, 518C, or 518E.

(9) **"Electronic means"** is defined in Rule 14.01(a)(7) of the General Rules of Practice for the District Courts.

(10) **"Emergency protective care"** means the placement status of a child when:

(a) taken into custody by a peace officer pursuant to Minnesota Statutes, section 260C.151, subdivision 6; 260C.154; or 260C.175; or

(b) returned home before an emergency protective care hearing pursuant to Rule 41 pursuant to court-ordered conditions of release.

(11) **"Extended family member"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(2), and at 25 C.F.R. section 23.2.

(12) **"Foster care"** is defined in Minnesota Statutes, section 260C.007, subdivision 18.

(13) **"Independent living plan"** is a plan as described in Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (12).

(14) **"Indian child"** is defined in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 8.

(15) **"Indian child's tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(5), at 25 C.F.R. sections 23.2 and 23.109, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 9.

(16) **"Indian custodian"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(6), at 25 C.F.R. section 23.2, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 10.

(17) **"Indian tribe"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(8), at 25 C.F.R. section 23.2, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 12.

(18) **"Juvenile protection case records"** means all records regarding a particular juvenile protection matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript.

(19) **"Juvenile protection matter"** means any of the following types of matters:

(a) child in need of protection or services matters as defined in Minnesota Statutes, section 260C.007, subdivision 6, including habitual truant and runaway matters;

(b) neglected and in foster care matters as defined in Minnesota Statutes, section 260C.007, subdivision 24;

(c) review of voluntary foster care matters as defined in Minnesota Statutes, section 260C.141, subdivision 2;

(d) review of out-of-home placement matters as defined in Minnesota Statutes, section 260C.212;

(e) termination of parental rights matters as defined in Minnesota Statutes, sections 260C.301 to 260C.328; and

(f) permanent placement matters as defined in Minnesota Statutes, sections 260C.503 to 260C.521, including matters involving termination of parental rights, guardianship to the Commissioner of Human Services, transfer of permanent legal and physical custody to a relative, permanent custody to the agency, and temporary legal custody to the agency, and matters involving voluntary placement pursuant to Minnesota Statutes, section 260D.07.

(20) **"Legal custodian"** means a parent or other person, including a legal guardian, who by court order or statute has sole or joint legal custody of the child.

(21) **"Nonresident parent"** means a parent who was not residing with the child at the time the child was removed from the home.

(22) **"Parent"** is defined in Minnesota Statutes, section 260C.007, subdivision 25.

(23) **"Parentage matter"** means an action under the Parentage Act, Minnesota Statutes, sections 257.51 to 257.74.

(24) **"Person"** is defined in Minnesota Statutes, section 260C.007, subdivision 26.

(25) **"Presumed father"** means an individual who is presumed to be the biological father of a child under Minnesota Statutes, section 257.55, subdivision 1, or section 260C.150, subdivision 2.

(26) **"Protective care"** means the right of the responsible social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the responsible social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(27) **"Protective supervision,"** as referenced in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (1), means the right and duty of the responsible social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

(28) **"Putative father"** is defined in Minnesota Statutes, section 260C.007, subdivision 26a.

(29) **"Qualified expert witness"** is defined in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 17a.

(30) **"Reasonable efforts to prevent placement"** is defined in Minnesota Statutes, section 260.012, paragraph (d).

(31) **"Reasonable efforts to finalize a permanent plan for the child"** is defined in Minnesota Statutes, section 260.012, paragraph (e).

(32) **"Relative"** is defined in Minnesota Statutes, section 260C.007, subdivision 27. For an Indian child, "relative" also includes persons within the definition of "relative of an Indian child" as defined in Minnesota Statutes, section 260C.007, subdivision 26b, and persons within the definitions of "extended family member," "Indian custodian," or "parent" under the Indian Child Welfare Act, 25 U.S.C. sections 1903(2), (6), and (9), and under 25 C.F.R. section 23.2.

(33) **"Removed from home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(34) **"Reservation"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(10), and in 25 C.F.R. section 23.2.

(35) **"Shelter care facility"** is defined in Minnesota Statutes, section 260C.007, subdivision 30.

(36) **"Trial home visit"** is defined in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (3).

(37) **"Tribal court"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(12), and in 25 C.F.R. section 23.2.

(38) **"Voluntary foster care"** is a placement of a child in foster care as described in Minnesota Statutes, section 260C.227 or 260C.229, or chapter 260D. For an Indian child, voluntary foster care placements are defined at Minnesota Statutes, section 260.755, subdivision 22, and are subject to the procedural requirements of Minnesota Statutes, section 260.765.

2019 Advisory Committee Comment

Rule 2 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

Rule 2.01(7) cites the definitions of "child custody proceeding" under the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1903(1), "child-custody proceeding" under the ICWA regulations, 25 C.F.R. section 23.2, and "child placement proceeding" under the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, section 260.755, subdivision 3. There are some differences between each of the definitions. The ICWA definition exempts "placement[s] based upon an act which, if committed by an adult, would be deemed a crime." In contrast, the ICWA regulation definition expressly includes "status offenses" within the definition of "child-custody proceeding," but unlike ICWA exempts "emergency proceeding[s]" from the definition. The ICWA regulation definition also specifies that for its purposes, "an action that may culminate in one of these four outcomes [foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement] is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes." Meanwhile, the MIFPA definition includes "placements based upon juvenile status offenses, but do[es] not include a placement based upon an act which if committed by an adult would be deemed a crime." The applicability and interplay of these three definitions should be determined on a case-by-case basis.

Rule 2.01(14) cites the definition of "Indian child" under MIFPA, Minnesota Statutes, section 260.755, subdivision 8. Unlike the definition of Indian child under ICWA, 25 U.S.C. section 1903(4), MIFPA does not require a child who is eligible for tribal membership to be the biological child of a member of an Indian tribe. The Committee notes that the MIFPA definition provides a "higher standard of protection to the rights of the parent or Indian custodian" as contemplated by ICWA, 25 U.S.C. section 1921. See In re the Adoption of M.T.S., 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).

Rule 2.01(15) cites the definitions of "Indian child's tribe" under ICWA, 25 U.S.C. section 1903(5), the ICWA regulations, 25 C.F.R. sections 23.2 and 23.109, and MIFPA, Minnesota Statutes, section 260.755, subdivision 9. In situations where a child is a member or eligible for membership in more than one tribe, the ICWA definition states that the "Indian child's tribe is the tribe with which the Indian child has the most significant contacts." The MIFPA definition restates the ICWA definition, and then provides that if the tribe with which the child has the most significant contacts does not become involved with the outcome of the court actions, "any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe." In contrast, 25 C.F.R. section 23.109, "How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?", sets out a different procedure. The applicability and interplay of these three definitions should be determined on a case-by-case basis.

Rule 2.01(16) cites the definitions of "Indian custodian" under ICWA, 25 U.S.C. section 1903(6), the ICWA regulations, 25 C.F.R. section 23.2, and MIFPA, Minnesota Statutes, section 260.755, subdivision 10. The ICWA regulation definition additionally provides that "[a]n Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law."

Rule 2.01(32) cites the statute defining who is a "relative" for purposes of juvenile protection matters. The rule cites the additional state statutes that govern who is a "relative" for an Indian child for purposes of juvenile protection matters. The state statute provides that a "relative" of an Indian child includes anyone who is an "extended family member," an "Indian custodian," or a "parent" of the child as defined in ICWA.

RULE 3. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 3.01. Rules of Civil Procedure

Except as otherwise provided by these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

Rule 3.02 Rules of Evidence

Subd. 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible if required by Minnesota Statutes, section 260C.165.

Subd. 3. Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the court, upon its own motion or the motion of any party or the county attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

Rule 3.03. Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901-1963; the ICWA regulations, 25 C.F.R. part 23; the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, sections 260.751 to 260.835; and by these rules when these rules are not inconsistent with ICWA, the ICWA regulations, or MIFPA.

Rule 3.04. Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure, codified as Rules 901-907 of the General Rules of Practice for the District Courts, apply to juvenile protection matters.

Rule 3.05. Court Interpreter Statutes, Rules, and Court Policies

The statutes, court rules, and court policies regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to those statutes, court rules and court policies.

Rule 3.06. General Rules of Practice for the District Courts

Except as otherwise provided by these rules, Rules 1-2, 4-17, and 901-907 of the General Rules of Practice for the District Courts apply to juvenile protection matters. Rules 3 and 101-814 of the General Rules of Practice for the District Courts do not apply to juvenile protection matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in juvenile protection matters.

(Amended effective January 1, 2022.)

2019 Advisory Committee Comment

Rule 3 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 3 are not intended to substantively change the rule's meaning.

Rule 3.02 refers to Minnesota Statutes, section 260C.165, which makes various types of statements admissible in juvenile protection matters. The prior version of Rule 3.02 restated the statutory language, but the amended rule simply cites the statute.

Rule 3.06 describes which of the General Rules of Practice for the District Courts apply to juvenile protection matters. General Rule of Practice 5 in general provides that an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in juvenile protection matters. For that reason, Rule 3.06 provides that the requirements of General Rule of Practice 5 relating to pro hac vice admissions and electronic filing do not apply to attorneys who represent Indian tribes. General Rule of Practice 10, as amended in 2018, addresses recognition of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe. Rule 10.01 addresses situations where recognition is mandatory (including when recognition is required by the Indian Child Welfare Act), and Rule 10.03 addresses situations where recognition is discretionary.

B. General Rules for Juvenile Protection Matters

RULE 4. TIME

Rule 4.01. Computation of Time

Unless otherwise provided by statute, the day of the act or event from which the designated period of time begins to run shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes any holiday designated in Minnesota Statutes, section 645.44, subdivision 5, as a holiday for the state or any state-wide branch of government and any day that the U.S. mail does not operate.

Rule 4.02. Additional Time After Service by U.S. Mail or Other Means

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other document and the notice or other document is served by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

Rule 4.03. Sanctions for Violations of Timelines

These rules contain several timelines that apply to different types of juvenile protection matters. The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

2019 Advisory Committee Comment

Rule 4 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 4 are not intended to substantively change the rule's meaning.

Rule 4.01 is amended to more closely track the language of Rule 6.01 of the Rules of Civil Procedure, and to eliminate a potential conflict between the rule and the statutory definition of "holiday."

Rule 4.02 is amended to refer to "local Minnesota time," which tracks the language in Rule 6.05 of the Rules of Civil Procedure. This eliminates a potential ambiguity in the rule: the extra day to respond arises if service is accomplished after 5:00 p.m. under Minnesota time. This clarification is important with the use of service through the court's E-Filing System, which can be used from anywhere in the world, in any time zone.

Until 2019, Rule 4.03 listed timeline requirements for several types of juvenile protection matters. To promote clarity, those timeline requirements have been moved to the rules governing each type of juvenile protection matter: Rules 39, 43 and 52.

The former Rule 4.04 has been renumbered to Rule 4.03, and recognizes the court's authority to issue sanctions for willful violations of the timelines set forth in these rules.

RULE 5. CONTINUANCES

Rule 5.01. Compliance with Timelines

Subd. 1. Generally. Upon its own motion or motion of a party or the county attorney, the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed.

Subd. 2. Trials. Trials may not be continued or adjourned for more than one week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.

Rule 5.02. Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 5.03. Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes, sections 260C.001 to 260C.637.

2019 Advisory Committee Comment

Rule 5 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 5 are not intended to substantively change the rule's meaning.

Although a court may grant a continuance in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state time requirements for permanency determinations.

RULE 6. SCHEDULING ORDER

Rule 6.01. Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

Rule 6.02. Order

Subd. 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 46 or 55, or within 15 days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

(a) completion of discovery and other pretrial preparation;

(b) serving, filing, or hearing motions;

(c) submission of the proposed case plan;

(d) the pretrial conference;

(e) the trial;

(f) the disposition hearing;

(g) the permanency placement determination hearing; and

(h) any other events deemed necessary or appropriate.

Rule 6.03. Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

2019 Advisory Committee Comment

Rule 6 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 6 are not intended to substantively change the rule's meaning.

RULE 7. REFEREES AND JUDGES

Rule 7.01. Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any juvenile protection matter under the jurisdiction of the juvenile court.

Rule 7.02. Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a matter heard by a referee. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 7.03. Transmittal of Referees Findings and Recommended Order

Subd. 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee, unless stayed, reversed, or modified by a judge upon review.

Rule 7.04. Review of Referee's Findings and Recommended Order

Subd. 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties and the county attorney within five days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party and the county attorney of the judge to whom the review has been assigned.

Subd. 3. Response to Motion for Review. The parties and the county attorney shall file and serve any responsive motion and memorandum within three days from the date of service of the motion for review.

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee, and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party or county attorney desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

Rule 7.05. Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The judge shall confirm or modify the order within 15 days of the transmittal of the findings and proposed order.

Rule 7.06. Removal of Judge or Referee

A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular judge or referee under the procedures and standards set forth in Rule 63 of the Minnesota Rules of Civil Procedure. When a permanent placement matter or termination of parental rights matter is filed in connection with a child is the subject of a pending child in need of protection or services matter, the permanency or termination matter shall be considered a continuation of the protection matter for purposes of this rule. For that reason, if the judge or referee assigned to hear the protection matter is assigned to hear the permanency or termination matter, the parties and the county attorney cannot disqualify the assigned judge or referee as a matter of right.

2019 Advisory Committee Comment

Rule 7 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 7 are intended to establish a consistent standard for removal of judges or referees.

Former Rule 7.03 governed the process for removing a particular referee from presiding over a case, either as of right or for cause. This closely tracked the process for removing a particular judge from presiding over a case, in former Rule 7.07. Both judges and referees are governed by the Code of Judicial Conduct, and the committee believes the same process should govern removals of judges and removals of referees. Accordingly, former Rule 7.03 has been deleted, and removals of judges and referees are now governed by Rule 7.06. The rule incorporates the judicial removal procedures of Civil Procedure Rule 63, which in turn allows for a limited opportunity to remove a judge as of right, and (as of July 1, 2018) incorporates the Code of Judicial Conduct. The same standard is used in the Rules of Criminal Procedure (Minn. R. Crim. P. 26.03, subd. 14) and the

Rules of Juvenile Delinquency Procedure (Minn. R. Juv. Del. P. 22). Rule 7.06 clarifies that for purposes of removals of right, a permanency or termination proceeding filed in connection with a pending CHIPS proceeding is considered a continuation of the CHIPS proceeding. Essentially, each party has a one-time opportunity to remove a judge or referee as of right, and that right does not arise again if a CHIPS proceeding goes on to a permanency or termination proceeding.

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Presumption of Access to Juvenile Protection Case Records. Except as otherwise provided in Rule 8.04 of these rules and the Rules of Public Access to Records of the Judicial Branch, all juvenile protection case records relating to any juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party, participant, or member of the public for inspection and copying. Any order prohibiting access to all juvenile protection records of a particular case, or any portion of a juvenile protection case record, shall be accessible to the public, parties, and participants.

Rule 8.02. Effective Date

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection and copying. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection and copying.

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection and copying. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county before July 1, 2002, shall not be accessible to the public for inspection and copying.

Rule 8.03. Access to Records Filed Prior to July 2015; Access to Records Upon Appeal

(a) **Access to Records Filed Before July 1, 2015.** For juvenile protection case records filed before July 1, 2015, or for case records filed before October 1, 2016, in cases where a child is a party, confidential information to which access is restricted under Rule 8.04 shall, if necessary, be redacted by or at the direction of court administration staff prior to allowing access to any party, participant, or member of the public. In the case of a request for access to a petition filed before July 1, 2015, when a redacted petition has not been filed as required by the rules in effect at the time of filing, court administration staff may notify the petitioner of the access request and direct the petitioner to promptly file a petition from which the confidential information has been redacted as required so that access may be provided to the requesting individual.

(b) **Access to Records During Appeal.** For juvenile protection case records filed before July 1, 2015, confidential information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. A request for access to a juvenile protection case record by any party, participant, or member of the public during an appeal shall be directed to the district court, and the portion of the record shall, if necessary, be redacted of all confidential information under Rule 8.03 by or at the direction of court administration staff before access shall be allowed.

Rule 8.04. Juvenile Protection Case Records Inaccessible to the Public, Parties, or Participants

Subd. 1. Definitions. The following definitions apply for purposes of this rule:

(a) "Calendar" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(b) "Register of Actions" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(c) "Remote Access" is as defined in Rule 8, subd. 2, of the Rules of Public Access to Records of the Judicial Branch.

(d) "Confidential document" means any document that is inaccessible to the public under subdivisions 2 or 4 of this rule.

(e) "Confidential information" means any information that is inaccessible to the public under subdivision 2(d), (e), (j), (l), (m), or (p).

Subd. 2. Confidential Documents and Confidential Information. The following juvenile protection case records are confidential documents or confidential information and are accessible to the public, parties, and participants only as specified in subdivision 3:

(a) official transcripts of testimony taken during proceedings that are closed by the presiding judge;

(b) audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;

(c) victims' statements;

(d) portions of juvenile protection case records that identify reporters of abuse or neglect;

(e) records of HIV testing, portions of records that reveal any person has undergone HIV testing, or any reference to any person's HIV status;

(f) medical records, chemical dependency evaluations and records; psychological evaluations and records; and psychiatric evaluations and records;

(g) sexual offender treatment program reports;

(h) portions of photographs that identify a child;

(i) notices of change of foster care placement;

(j) the identity of a minor victim or perpetrator of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings provided by the petitioner pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912, and any response to that notice from an Indian tribe or the Bureau of Indian Affairs as to whether the child is eligible for tribal membership, including documents such as family ancestry charts, genograms, and tribal membership information;

(l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public through a protective order issued under Rule 8.07;

(m) the name, address, home, or location of any shelter care facility or foster care in which a child is currently placed pursuant to law or court order, except in documents consenting to adoption or transferring permanent legal and physical custody to a foster care provider or relative;

(n) signature pages containing signatures of foster parents or children whose identities are confidential;

(o) documents provided to the court to give notice of a hearing for a child under state guardianship pursuant to Rule 27.07, subd. 2; and

(p) names, addresses, e-mail addresses, or telephone numbers that would endanger a person if disclosed in a public court filing.

Subd. 3. Access to Juvenile Protection Case Records by Public, Parties, and Participants.

(a) **Public.** The public shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(a)-(p) and subdivision 4 of this rule.

(b) **Parties.** Unless otherwise ordered by the court, parties shall have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), and (e) of this rule. Records listed in subdivision 2(p) of this rule shall not be accessible to the parties, but shall be accessible to the attorneys and the guardian ad litem.

(c) **Participants.** Upon order of the court, participants may have access to inspect and copy all juvenile protection case records in the court file, except those listed in subdivision 2(b), (d), (e), and (p) of this rule. A participant's request for an order permitting access need not be made by written motion, but may be made orally on the record.

Subd. 4. Juvenile Case Records Confidential and Presumptively Inaccessible to the Public Unless Authorized by Court Order. The following juvenile protection case records are confidential and presumptively inaccessible to the public unless otherwise ordered by the court upon a finding of an exceptional circumstance:

(a) "Confidential Documents" filed under subdivision 5; and

(b) "Confidential Information Forms" filed under subdivision 5.

Subd. 5. Submission of Confidential Documents and Confidential Information.

(a) **Confidential Documents.** No person shall file a confidential document listed in subdivision 2 unless it is submitted under a cover sheet entitled "Confidential Document" (see Form 11.3 as published by the State Court Administrator), in which case the document shall be designated as confidential and inaccessible to the public. The person filing a confidential document is solely responsible for ensuring that it is filed under a "Confidential Document" cover sheet and designated as confidential.

(b) **Confidential Information.** No person shall file a publicly accessible document, including without limitation, petitions and social services or guardian ad litem reports, that contains any confidential information listed in subdivision 2. Confidential information shall be omitted from the public document and filed on a separate document entitled "Confidential Information Form" (see Form 11.4 as published by the State Court Administrator), in which case the Confidential Information Form shall be designated as confidential and inaccessible to the public. The person filing a publicly accessible document is solely responsible for ensuring that all confidential information is omitted from the document and filed on a separate "Confidential Information Form." A person filing a document that refers to a child or foster parent using a pseudonym may reference a Form 11.4 previously filed that identifies the child or foster parent instead of filing a new Form 11.4.

(c) **Records Generated by the Court.** Confidential information generated by the court in its register of actions, calendars, indexes, and other records shall not be accessible to the public. Paragraphs (a) and (b) of this subdivision do not apply to orders or other documents filed by judicial officers.

(d) **Noncompliance.**

(1) **Confidential Document.**

(i) If it is brought to the attention of court administration staff that a confidential document has not been filed under a "Confidential Document" cover sheet and/or has not been designated as confidential, court administration staff shall designate the document as confidential, notify the filer of the change in designation, and direct the filer to promptly file a cover sheet in compliance with subdivision 5(a) of this rule.

(ii) If it is brought to the attention of court administration staff that an Indian tribe or the Bureau of Indian Affairs has filed a response to a notice described under subdivision 2(k) of this rule but failed to file a "Confidential Document" cover sheet and/or designate the response as confidential, court administration staff shall designate the response as confidential. Court staff shall not direct the filing of a cover sheet under this paragraph.

(2) **Confidential Information.** If it is brought to the attention of court administration staff that a publicly accessible document includes confidential information that has not been filed under a "Confidential Information Form" and/or has not been designated as confidential, court administration staff shall designate the document as confidential and direct the filer to promptly file a document in compliance with subdivision 5(b) of this rule.

(3) **Sanction.** If a person fails to comply with the requirements of this rule, the court may upon motion or its own initiative impose appropriate sanctions, including any monetary fee to the court or costs necessary to prepare a document for filing that complies with this rule.

Rule 8.05. Access to Exhibits

Juvenile protection case records received into evidence as exhibits during a hearing or trial are not subject to Rule 8.04, subdivision 5, and shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

Rule 8.06. Electronic Access to Juvenile Protection Case Records

Electronic access to juvenile protection case records, including remote access and access at a courthouse facility, shall be as permitted by the Rules of Public Access to Records of the Judicial Branch.

Rule 8.07 Protective Order

Subd. 1. Orders Regarding the Public. The court may sua sponte, or upon motion and hearing, issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing, the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Subd. 2. Orders Regarding Parties. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party's access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Rule 8.08. Case Captions and Text of Decisions and Other Records

Subd. 1. District Court. All juvenile protection court files and any petitions, pleadings, reports, orders, or other documents shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection case files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 23.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supersedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions on appeal.

Rule 8.09. Access to Juvenile Protection Record by Family Court Judicial Officer

In any family court matter involving custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, the assigned judicial officer shall, upon notice to the parties, have access to the entire juvenile protection court record. Upon request of a party made within 10 days of the court's notice to the parties, the parties shall have an opportunity to be heard after the court accesses the file.

Rule 8.10. Access to Juvenile Protection Record by Parties and Child's Guardian ad Litem in Family Court Matter

The parties to a family court matter involving a determination of custody or parenting time regarding a child who has been or is the subject of a juvenile protection matter, including any person established as a parent in a parentage matter and any guardian ad litem appointed in the family court matter, shall have access to the juvenile protection case record to the same extent as a party to the juvenile protection matter has access under Rule 8.04, subd. 3. If the juvenile court has issued a protective order under Rule 8.07, the portions of the juvenile protection case record subject to the protective order continue to be subject to the protective order when accessed by any party to the family court matter.

2019 Advisory Committee Comment

Rule 8 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

Most juvenile protection case records in Minnesota state courts are public. Public access began as a pilot project. Records of cases filed in the pilot project locations (courts in the counties of Chisago, Clay, Goodhue, Hennepin, Houston, LeSueur, Marshall, Pennington, Red Lake, Stevens, St. Louis (Virginia courthouse only), and Watonwan) are presumptively publicly accessible if filed on or after June 28, 1998. The presumption of public access took effect statewide on July 1, 2002. Rule 8.02 distinguishes between pilot project and non-pilot project records.

After the pilot project, juvenile protection records were accessible to the public on an on-demand basis. Petitioners were responsible for filing redacted copies of their petitions so that court administration staff could make them available to the public, but otherwise court administration staff were responsible for redacting non-public information from juvenile protection case records

before making them accessible to the public. Non-public information includes both "confidential information" and "confidential documents" as defined in Rule 8.04. Redacting non-public information became an impracticable burden for court administration staff once juvenile protection case records were made electronically accessible to the public. For that reason, the rules were amended as of July 1, 2015, to provide that every person who files documents into juvenile protection cases is responsible for keeping non-public information out of public records. Court administration staff retain their historic responsibility for redacting non-public information from juvenile protection case records filed before July 1, 2015, as described in Rule 8.03.

Rule 8.04 draws the line between those juvenile protection records that are accessible to the public and those that are not. The rule helps strike a balance between preserving the privacy interests of the people involved in juvenile protection proceedings and ensuring transparency and accountability.

Everyone who files a document in a juvenile protection matter is responsible for separating the publicly accessible portions from those that are inaccessible to the public. The onus is on filers to ensure that the public and confidential portions of the filings are properly separated. There are two types of records that are inaccessible to the public: confidential documents and confidential information. Confidential documents must be designated as confidential upon filing, and must be filed with a Form 11.3 cover sheet, which is public. Confidential information is information that must be taken out of a public document and placed onto a Form 11.4 Confidential Information Form.

Only judicial officers have discretion to change the classification of a record from the classification set out in Rule 8.04. A judicial officer may order that a confidential record be made accessible to the public, or that a public record be made inaccessible if exceptional circumstances exist. Judicial officers who issue orders in juvenile protection proceedings have discretion to include confidential information and confidential documents in public court orders. Judicial officers are encouraged to consider that their public court orders are immediately accessible at every state courthouse in Minnesota.

Rule 8.04 defines three levels of access to juvenile protection records: what the public can access; what parties can access; and what participants can access. Members of the public can access confidential information or confidential documents only by filing a motion for and obtaining an order granting access. Parties can access most confidential documents and confidential information, with the exceptions of recordings of children alleging or describing abuse, the identities of reporters of child abuse or neglect, and information about any person's HIV status. Participants can access confidential information or confidential documents if a judge issues an order granting them access, and can request access orally or in writing without filing a formal motion for access.

Although confidential documents are inaccessible to the public, filers are free to discuss the contents of confidential documents in public court filings where doing so is necessary and relevant to the issues being addressed in the court filing. For example, all medical records are confidential documents. But a publicly accessible social worker report could describe a child's medical condition and progress in treatment. The social worker report could quote directly from the child's treatment records, even though the treatment records themselves are not accessible to the public. The public social worker report should not include confidential information, such as the child's HIV status or the child's identity if there is an allegation of sexual assault.

Categories of confidential documents:

Rule 8.04, subd. 2(a) precludes public access to transcripts of portions of hearings that were closed to the public by the presiding judge upon a finding of exceptional circumstances.

Rule 8.04, subd. 2(b) precludes public access to audio or video recordings of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This is consistent with Minnesota Statutes, section 13.821, which governs access to these recordings when held by an executive branch agency.

Rule 8.04, subd. 2(c) precludes public access to victims' statements, which includes written records of interviews with victims made under Minnesota Statutes, section 626.561. This is consistent with the confidential classification of victim interviews in presentence investigation reports in criminal proceedings, pursuant to Minnesota Statutes, sections 609.115, 609.2244, and 611A.037.

Rule 8.04, subds. 2(f) and (g) preclude public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports. This is consistent with Rule 4, subd. 1(f) of the Rules of Public Access to Records of the Judicial Branch. Filers should be careful not to violate federal law by disclosing these records. Under 42 U.S.C. section 290dd-2, records of all federally assisted or regulated substance abuse treatment programs are confidential and may not be disclosed by the program without consent or a court order. Disclosure procedural requirements are found in 42 C.F.R. sections 2.1-2.67.

Rule 8.04, subd. 2(h) precludes public access to portions of photographs that identify a child. Filers are required to designate as confidential any photograph that displays a child's face or other identifying features. Any need to make the remainder of the photograph accessible to the public can be addressed through a court order issued under Rule 8.07.

Rule 8.04, subd. 2(i) precludes public access to notices of change of foster care placement. All of the information in these notices is confidential under subdivision 2(m). The Form 11.3 cover sheet discloses to the public that there has been a change of foster care placement.

Rule 8.04, subd. 2(k) precludes public access to the notice of pending proceedings provided by the petitioner pursuant to 25 U.S.C. section 1912(a). The notices can contain detailed personal information about the child, including, when "known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." 25 C.F.R. section 23.111(d)(3). Parties who receive the notices are directed to keep them confidential. 25 C.F.R. section 23.111(d)(6)(ix). Subdivision 2(k) was amended in 2019 to also preclude public access to responses to these notices. Just as the notices can contain detailed personal information about the child, responses can also contain detailed personal information.

Rule 8.04, subd. 2(l) recognizes that judicial officers may, in exceptional circumstances, issue orders precluding public access to specified records.

Rule 8.04, subd. 2(n) precludes public access to the signature pages of documents containing signatures of foster parents or children whose identities are confidential. This recognizes that foster parents and, occasionally, children whose identities are confidential must sign documents that are filed with the court, such as out-of-home placement plans. Classifying the signature page as confidential preserves the confidentiality of their identities. Subdivision 2(n) does not make the remainder of the document confidential.

Rule 8.04, subd. 2(o) precludes public access to documents provided to the court by a social services agency under Rule 27.07, subd. 2(a) as part of a report when a child is under state guardianship. The information is provided to enable the court to provide notice of the hearing to various individuals. The identities of those individuals are nonpublic, and are additionally not accessible to parents whose rights have been terminated or who have executed a consent to adoption of the child.

Categories of confidential information:

Rule 8.04, subd. 2(d) precludes public access to the identity of a reporter of abuse or neglect of a child. This is consistent with state laws restricting the disclosure of the identity of a reporter of abuse or neglect. Minnesota Statutes, section 626.556. It is also intended to help preserve federal funds for child abuse prevention and treatment programs. 42 U.S.C. section 5106a(b)(2). Subdivision 2(d) does not, however, apply to testimony of a witness in a proceeding that is open to the public.

Rule 8.04, subd. 2(e) precludes public access to any person's HIV test results, to information that reveals that any person has been tested for HIV, and to any reference to a person's HIV status. This is consistent with the classification of HIV status of crime victims under certain state and federal laws. Minnesota Statutes, section 611A.19; 34 U.S.C. section 12391. Additionally, federal funding for early intervention services is contingent upon HIV status being kept confidential. 42 U.S.C. sections 300ff-61-300ff-63.

Rule 8.04, subd. 2(j) precludes public access to the identity of a minor victim or minor perpetrator of an alleged or adjudicated sexual assault. The rule is similar to the requirements of Minnesota Statutes, section 609.3471, and Rule 4, subd. 1(m) of the Rules of Public Access to Records of the Judicial Branch. Unlike that statute and rule, Rule 8.04, subd. 2(j) applies to all situations where there has been an allegation of sexual assault, even if the allegation is not proven. Several recommended practices are listed below in this comment.

Rule 8.04, subd. 2(m) precludes public access to the name, address, home, and location of the child's current shelter care or foster care placement. This is designed to reduce the risk of continued contact with someone whose parental rights have been terminated. Subdivision 2(m) only makes current placements confidential. It does not make a child's past placements confidential. Subdivision 2(m) does not apply to information disclosed in consent to adoption forms. Subdivision 2(m) also does not apply to information disclosed in documents, such as petitions or proposed orders, that are intended to transfer permanent legal and physical custody of a child to a foster care provider or relative. Documents containing the signature of a foster parent are addressed in subd. 2(n) (see the discussion of confidential documents above).

Rule 8.04, subd. 2(p) precludes public access to names, addresses, e-mail addresses, and telephone numbers if disclosing that information would endanger a person. Absent a court order, this information is also inaccessible to parties, but is accessible to attorneys and guardians ad litem.

Use of Form 11.3:

Every confidential document needs a Form 11.3 cover sheet. The filer should check the appropriate box on Form 11.3 to indicate the type of confidential document that is being filed.

Electronic filers using Form 11.3 need to file it as a separate PDF file from the confidential document. This makes it possible to make the cover sheet accessible to the public and the confidential documents inaccessible to the public.

Form 11.3 does not have a separate checkbox for documents referring to HIV, because having a separate checkbox would reveal to the public that there is a document referring to HIV. Documents referring to HIV should be checked as "medical records" on Form 11.3. Filers should not write anything on Form 11.3 to indicate there is a document referring to HIV.

Rule 8.04, subd. 5(d)(1)(i) directs court administration staff to take action if it is brought to their attention that a filer has failed to designate a confidential document as confidential and use a Form 11.3. The rule directs court administration staff to designate the document as confidential,

notify the filer of the change in classification, and direct the filer to file a Form 11.3 in compliance with the rule.

Subdivision 5(d)(1)(ii) creates a limited exception for responses to notices of pending court proceedings, which are confidential documents. The majority of the hundreds of federally recognized tribes are located outside of Minnesota, and may not be familiar with Minnesota's unique filing requirements in juvenile protection cases. If it is brought to the attention of court administration staff that the response has not been filed as confidential using Form 11.3, court administration staff are directed only to designate the document as confidential, without directing the filing of a Form 11.3 cover sheet. Subdivision 5(d)(1)(ii) only applies when tribes or the Bureau of Indian Affairs file responses to notices of pending court proceedings. If a tribe or the Bureau of Indian Affairs files any other type of confidential document, or if any other entity (such as a county attorney) files a tribal response to a notice of pending court proceeding, then subdivision 5(d)(1)(i) applies.

Use of Form 11.4:

Form 11.4 is used to file confidential information. If a document contains confidential information but is otherwise public, the public portion of the document must be filed as public. The confidential information is filed on a Form 11.4. Filers should file a Form 11.4 with each filing that contains confidential information, with the exception that filers may refer to a Form 11.4 that was previously filed in a case that identifies a child's identity or a foster parent's identity.

Some confidential information is accessible to parties and some is not. Filers who are submitting both party-accessible and party-inaccessible confidential information should use two Forms 11.4 to submit the information: one Form 11.4 that is accessible to the parties and another that is not accessible.

Electronic filers using Form 11.4 need to file it as a separate PDF file from the public document. This makes it possible to make the public document accessible to the public and the confidential information inaccessible to the public.

8.04, subd. 5(d)(2) directs court administration staff to take action if it is brought their attention that a publicly accessible document contains confidential information. Court administration staff are directed to designate the document as confidential and direct the filer to promptly file a document with confidential information properly separated.

Recommended practices for using pseudonyms for minor victims of sexual assault:

Do not use the child's initials when there is an allegation of sexual assault. Refer to the child as "Child 1," "Child 2," etc. The child's name, date of birth, race, and gender should be submitted on a Form 11.4. No Form 11.4 need be submitted if the child's identity has already been provided on a Form 11.4 in the same case. Instead, the public document may state "Child 1 is identified on Confidential Information Form 11.4, filed on [DATE]."

If there are multiple children in a case and only one child's identity is confidential, all of the children should be given pseudonyms to avoid revealing the child's identity by process of elimination.

Use consistent pseudonyms for minor children within a juvenile protection matter and within related juvenile protection matters. Do not use gendered pronouns. Instead of "she," "he," "his," or "her," write "the child" or "the child's."

Sometimes, an allegation of sexual assault is made midway through a case. In such situations, the child's identity will be apparent from previously filed documents. The previously filed publicly accessible documents continue to be publicly accessible, even though they identify the child. Under

Rule 8.07, a judicial officer may, upon finding an exceptional circumstance, order that the documents be made confidential.

A judicial order that uses a pseudonym for a child placed in foster care should include the child's identity in a confidential attachment which is incorporated into the order. If this is not done, the foster placement may not be eligible for federal Title IV-E reimbursement.

Recommended practices for using pseudonyms for foster parents:

Foster parents should be referred to as "Foster Parent 1," "Foster Parent 2," etc. No Form 11.4 need be submitted if the foster parent's identity has already been provided on a Form 11.4 in the same case. Instead, the public document may state "Foster Parent 1 is identified on Confidential Information Form 11.4, filed on [DATE]." When assigning a pseudonym to a foster parent, consider which pseudonyms have already been used for any previous foster parents in the case.

Case captions:

Rule 8.08 dictates the case captions to be used in juvenile protection matters. The captions are designed to minimize the stigma to children involved in juvenile protection matters.

Access when there is a related family court matter:

Rules 8.09 and 8.10 serve the child's best interests and judicial economy by permitting access by the judicial officer hearing a family court matter involving a child with a juvenile protection matter. After giving the parties notice, the judicial officer hearing the family court matter may access the records of the juvenile protection matter. This rule is consistent with the ethical considerations discussed in Minnesota Board of Judicial Standards Advisory Opinion 2016-2, Judicial Notice of Electronic Court Records in OFP Proceedings.

A legal parent in a family matter has access to the juvenile protection case record to the same extent as a party to the juvenile protection matter. If the juvenile court has issued a protective order regarding the content of the juvenile protection case record, that order remains in effect regarding access by any party to the family court matter.

Rule 9. ORDERS

Rule 9.01. Written or Oral Orders; Timing

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. All orders shall be filed with the court administrator within 15 days of the conclusion of the testimony, unless the court finds that a 15-day extension is required in the interests of justice or the best interests of the child. Each order issued following a hearing shall include the name and contact information of the court reporter. Failure to include the court reporter contact information does not extend the timeline for appeal. An order shall remain in full force and effect pursuant to law or until the first occurrence of one of the following:

(a) issuance of an inconsistent order; or

(b) the order ends pursuant to its terms.

Rule 9.02. Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

Rule 9.03. Method and Timing of Service; Persons to be Served

Subdivision. 1. Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party, county attorney, and such other persons as the court may direct, and may be made by personal service at the hearing, by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Except as otherwise provided in Rule 23.02, subd. 2, if a party is represented by counsel, delivery or service shall be upon counsel.

Subd. 2. Service Not Required. If service of the summons was by publication and the person has not appeared either personally or through counsel, service of court orders upon the person is not required.

Subd. 3. Timing of Service. Service of the order by the court administrator shall be accomplished within five days of the date the judicial officer delivers the order to the court administrator. In a permanency or termination of parental rights matter, service by the court administrator of the findings and order terminating parental rights or establishing other permanency for the child shall be accomplished within three days of the date the judicial officer delivers the order to the court administrator.

Subd. 4. Notification to Family Court. If a parentage matter is pending in family court regarding a child who is the subject of a juvenile protection matter, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of an order listed in Rule 24.06.

Rule 9.04. Notice of Filing of Order

Each order served upon the parties and the county attorney shall be accompanied by a notice of filing of order, which shall include notice of the right to appeal a final order pursuant to Rule 23.02. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

2019 Advisory Committee Comment

Rule 9 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments to Rule 9 are not intended to substantively change the rule's meaning. Rule 9 was formerly codified as Rule 10.

Rule 9.01 requires each order issued following a hearing to include the name and contact information of the court reporter. This allows easy identification of court reporters for the purpose of timely requesting transcripts for purposes of appeal.

The phrase "send notification" in Rule 9.03, subd. 4 is intended to permit flexibility at the local level in determining the "notification" used to alert both the "family court administrator" and the "assigned family court judicial officer" that the juvenile protection matter has progressed to the point where the parentage matter may be completed. It is not intended to require formal legal notice as that term is used in Rules 44 and 61 in regard to ensuring parties or participants have notice of hearings or as used in Rule 9.03 in regard to notice of filing of an order. Court administration may use any reasonable means of letting family court know the parentage matter may be completed.

Rule 10. RECORDING AND TRANSCRIPTS

Rule 10.01. Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified

personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 10.02. Transcript Requests

Transcripts may be requested by the county attorney, parties, and participants. The court upon a showing of good cause may grant any other person's written or on the record request for a transcript.

Rule 10.03. Expense

A person who is unable to pay transcript preparation costs may apply for in forma pauperis status and a waiver of transcript costs under Minnesota Statutes, section 563.01.

2019 Advisory Committee Comment

Rule 10 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 10 was formerly codified as Rule 11.

Rule 11. USE OF TELEPHONE AND INTERACTIVE VIDEO

Rule 11.01. Motions and Conferences

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

Rule 11.02. Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney or on the court's own initiative, the court may hold hearings and take testimony by telephone or interactive video.

Rule 11.03. In Court Appearance Not Precluded

This rule shall not preclude a party or county attorney from being present in person before the court at a hearing.

2019 Advisory Committee Comment

Rule 11 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 11 was formerly codified as Rule 12.

RULE 12. SUBPOENAS

Rule 12.01. Subpoena for a Hearing or Trial

At the request of any party or the county attorney, the court administrator shall issue a subpoena for a witness in a matter pending before the court. Alternatively, an attorney as an officer of the court may issue and sign a subpoena on behalf of the court where the matter is pending.

Rule 12.02. Form; Issuance; Notice

Subdivision 1. Form. Every subpoena shall:

(a) state the name of the court from which it is issued;

(b) state the title of the action and its court file number, if one has been assigned; and

(c) command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 17, a trial pursuant to Rule 49 or 58, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 12.07.

Rule 12.03. Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person at least 18 years of age who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at the abode. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, by e-mail, or by other electronic means.

Rule 12.04. Motion to Quash a Subpoena

A person served with a subpoena may file and serve a motion to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

(a) direct compliance with the subpoena;

(b) modify the subpoena if it is unreasonable or oppressive;

(c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or

(d) quash the subpoena.

Rule 12.05. Objection

The person to whom the subpoena is directed may, within five days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or during the taking of the deposition, and upon notice and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 12.06. Subpoena for Taking Depositions; Place of Examination

Subdivision 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 17, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend an examination only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 12.07. Expenses

Subdivision 1. Witnesses. If the subpoena is issued by an attorney for or at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness

fees and mileage shall be paid by public funds. If the subpoena is issued by an attorney for or at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. Unless otherwise ordered by the court upon motion, all other fees and mileage shall be paid by the party for whom the subpoena was issued.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 12.04 or Rule 12.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 12.08. Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney proceed against the person for civil contempt of court pursuant to Rule 13 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

2019 Advisory Committee Comment

Rule 12 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 12 was formerly codified as Rule 13.

Rule 12.01 is amended to allow attorneys to issue subpoenas as officers of the court. This is consistent with modern practices in civil and criminal cases in Minnesota's state courts. Minn. R. Civ. P. 45.01(c); Minn. R. Crim. P. 22.02, subd. 2. The committee believes allowing attorneys to issue subpoenas as officers of the court will eliminate an unnecessary administrative burden for attorneys and court administration staff. Rule 12.01 retains the language that the court administrator shall issue subpoenas upon request by a party or the county attorney. Participants do not have the right to the issuance of subpoenas in juvenile protection cases unless they obtain party status. Minn. R. Juv. Prot. P. 32.02(g) (right of parties to subpoena witnesses); Minn. R. Juv. Prot. P. 33.02, subd. 1 (list of rights of participants does not include subpoenaing witnesses).

RULE 13. CONTEMPT

Rule 13.01. Initiation

Contempt proceedings shall be initiated by personal service upon the alleged contemnor of an order to show cause together with a motion for contempt and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

(a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;

(b) a quotation of the specific applicable provisions ordered;

(c) a statement identifying the alleged contemnor's ability to comply with the order; and

(d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 13.02. Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 13.03. Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

Rule 13.04. Sentencing

Subdivision 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

2019 Advisory Committee Comment

Rule 13 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 13 was formerly codified as Rule 14. The amendments to Rule 13 are not intended to substantively change the rule's meaning.

RULE 14. MOTIONS

Rule 14.01. Form

Subdivision 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

(a) set forth the relief or order sought;

(b) state with particularity the grounds for the relief or order sought;

(c) be signed by the person making the motion;

(d) be filed with the court, unless it is made orally in court on the record; and

(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

Rule 14.02. Service and Notice of Motions

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, upon all parties, or, if represented, upon the attorneys for such individuals, the county attorney, and any other persons designated by the court. If service of the petition was by publication and the address of the person remains unknown, service of a motion shall be deemed sufficient if it is mailed to the person's last known address. The moving party shall serve only the notice of the motion and not the motion upon all participants. The court administrator shall perform service if the address of the person being served is confidential.

Subd. 2. How made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of a motion shall be made by personal service, mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five days before it is to be heard, unless the court for good cause shown permits a motion to be made and served less than five days before it is to be heard. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

Rule 14.03. Ex Parte Motion and Hearing

Subdivision 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent or legal custodian, the court shall schedule a hearing to review the order within 72 hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes, 260C.148. Upon

issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 14.04. Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

(a) lack of jurisdiction over the subject matter;

(b) lack of jurisdiction over the child;

(c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition; or

(d) any other ground supported by law.

Rule 14.05. Motion to Strike Document

If a motion to strike a document or any portion of a document is granted, the document or portion of document shall be marked as stricken, but the document shall remain in the court file.

Rule 14.06. Obtaining Hearing Date; Notice to Parties

Upon request of a party who intends to file a notice of motion and motion, the court administrator shall schedule a hearing which shall take place within 15 days of the request. A party obtaining a date and time for a hearing on a motion shall file and serve the notice of motion and motion pursuant to Rule 14.02.

Rule 14.07. Timing and Service of Orders

Orders regarding motions shall be filed with the court administrator within 15 days of the conclusion of the hearing. Orders shall be served by the court administrator pursuant to Rule 9.03.

2019 Advisory Committee Comment

Rule 14 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 14 was formerly codified as Rule 15.

Former Rule 15.02, subd. 1(b) has been transferred to Rule 31.01, subd. 2(a), which requires motions to transfer jurisdiction to a tribal court to be served additionally upon parents who are participants to the proceedings. Rule 31.01, subd. 2(a) does not require service of a transfer motion upon a child. That requirement, formerly codified in Rule 15.02, subd. 1(b), was based upon ICWA guidelines that have since been rescinded.

Rule 14.02, subd. 2, governs methods of service by filers, and is similar to Rule 9.03, which governs methods of service by court administration staff. One important distinction is that Rule 9.03 recognizes court administration staff's discretion under General Rules of Practice 14.02(a) and 14.03(f) to serve by e-mail without written agreement by the recipient. Under General Rule of Practice 14, the act of designating an e-mail address for receipt of service in a case constitutes consent to service by e-mail from court administration staff. This consent only extends to service by court administration staff. Thus, Juvenile Protection Procedure Rule 14.02, subd. 2, allows filers to serve by e-mail only if service through the E-Filing System is not required and the recipient has agreed in writing to receive service by e-mail.

RULE 15. SIGNING OF PLEADINGS, MOTIONS, AND OTHER DOCUMENTS; SANCTIONS

Rule 15.01. Signature

Subdivision 1. Generally. Except as otherwise provided in these rules, every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each document shall state the signer's name, address, telephone number, e-mail address if the document is filed or served electronically, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with Rule 15.02.

Subd. 2. Exception - Social Worker and Guardian Ad Litem Reports. Reports filed by social workers and guardians ad litem under Rule 27 need not be signed.

Rule 15.02. Representations to Court

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, motion, report, affidavit, or other similar document, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Rule 15.03. Sanctions

If a pleading, motion, affidavit, or other similar document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, affidavit, or other similar document is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other similar document, including reasonable attorney fees.

2019 Advisory Committee Comment

Rule 15 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 15 was formerly codified as Rule 16. Former Rule 16 provided that filers could provide an address, e-mail address, or telephone number on a separate informational statement if providing

that information would endanger a person. For consistency, those provisions have been moved to Rule 8.04, which governs access to juvenile protection case records.

RULE 16. METHODS OF FILING AND SERVICE

Rule 16.01. Types of Filing

Subd. 1. Generally; Electronic Filing. When electronic filing is required by Rule 14 of the General Rules of Practice for the District Courts, documents shall be filed electronically. Otherwise, documents may be filed with the court personally, by U.S. mail, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission.

(a) Any document not required to be filed through the E-Filing System may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

(b) Within five days after the court has received the transmission, the person filing the document shall forward the following to the court:

(1) a $25 transmission fee for each 50 pages, or part thereof, of the filing; unless otherwise provided by statute or rule or otherwise ordered by the court;

(2) any bulky exhibits or attachments; and

(3) the applicable filing fee or fees, if any.

(c) If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the person transmitting it for filing and made available to the court or any party or participant to the action upon request.

(d) Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Rule 16.02. Types of Service

Subd. 1. Personal Service. Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules or ordered by the court, the sheriff, a deputy sheriff, or any other person at least 18 years of age who is not a party to the proceeding may make personal service of a summons or other process. The social services reports and guardian ad litem reports required under Rule 27 may be served directly by the social worker or guardian ad litem.

(a) **Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that county in an action in any of its courts of general jurisdiction; or

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the petition; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

Subd. 2. U.S. Mail. Service by U.S. mail means placing the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice, or other documents in the regular issue of a qualified newspaper as specified in Rule 44.02, subdivision 3, (for child in need of protection or services matters) or Rule 53.02, subdivision 3, (for permanency or termination of parental rights matters). The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials.

Subd. 4. Electronic Service. Electronic service means service through the E-Filing System under the procedures of Rule 14 of the General Rules of Practice. Electronic service shall be used when required by Rule 14.

Subd. 5. Waiver of Personal Service.

(a) Waivers of personal service may be made by mailing by first-class U.S. mail, postage prepaid to the person to be served, a copy of the document to be served together with two copies of a notice and waiver of service by mail conforming substantially to a form to be developed by the State Court Administrator, along with a return envelope, postage prepaid, addressed to the sender.

(b) Any person served by U.S. mail who receives a notice and waiver of service by mail form shall, with 20 days of the date the notice and waiver form is mailed, complete the waiver form and return one copy of the completed form to the serving party.

(c) If the serving party does not receive the completed waiver form within 20 days of the date it is mailed, service is not valid upon that person. The serving party shall then serve the document by any means authorized under this rule.

(d) If the person served by U.S. mail does not complete and return the notice and waiver form within 20 days of the date it is mailed, the court may order the costs of personal service to be paid by the person served.

Subd. 6. Alternative Electronic Service by Agreement. Unless other means of service (such as personal service or electronic service) are required, any document may be served by e-mail or other electronic means as agreed to by the person to be served on the record or in writing.

Rule 16.03. Service Upon Counsel; Social Services Agency

Unless personal service upon a party or participant is required, service upon the party or participant's counsel shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed service upon the responsible social services agency. Reports and other documents that are not court orders should not be served directly upon a represented party.

Rule 16.04. Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing. Completion of service by electronic means is governed by Rule 14.03(e) of the General Rules of Practice. When a waiver of service is filed with the court, these rules apply as if the document had been served on the date of signing of the waiver. Service by alternative electronic means is complete upon the completion of transmission of the documents.

Rule 16.05. Proof of Service

Subd. 1. Generally. On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

(a) whether the document was served;

(b) the method of service;

(c) the name of the person served; and

(d) the date and place of service.

If the recipient signed a waiver of service, the waiver may be filed in lieu of an affidavit. If the document was served through electronic service pursuant to Rule 14 of the General Rules of Practice, the E-Filing System's records of service are sufficient proof of service.

Subd. 2. Exceptions.

(a) **Social Worker and Guardian ad Litem Court Reports.** Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 27 and, instead, shall include with their report a certificate of distribution under oath or penalty of perjury under Minnesota Statutes, section 358.117, stating:

(1) the name of the person served;

(2) the method of service;

(3) the date and place of service; and

(4) the name of the person submitting the certificate of distribution.

(b) **Court Administrators.** If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

2019 Advisory Committee Comment

Rule 16 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 16 was formerly codified as Rule 31.

Rule 16 addresses different methods of filing and service. Rule 16.01 reflects that, in many situations, General Rule of Practice 14 requires documents to be filed through the court's E-Filing System. Filers who are not governed by General Rule of Practice 14 can deliver their documents to the courthouse, mail them, or file them by facsimile. Facsimile filing is subject to an administrative processing fee due to the significant administrative burdens it imposes on court administration staff. As has been the case throughout its history, facsimile filing is not intended to be a routine filing method. The rule does not provide a specific mechanism for collecting the transmission fee required under the rule. Because prejudice may occur to a party if a filing is deemed ineffective, the court should determine the appropriate consequences of failure to pay the necessary fee.

Rule 16.02 describes the various means of service. In many situations, General Rule of Practice 14 requires the use of service through the E-Filing System. In many other situations, service by U.S. mail is permissible. In some situations, personal service is required. Subdivisions 1 and 5 of Rule 16.02 clarify the differences between personal service and a waiver of personal service, and between electronic service and electronic service by agreement. People who would be entitled to personal service may agree to waive personal service and receive the documents by mail. If they do not agree to waive personal service, then personal service is still required. However, the court may order them to pay the costs of personal service. This clarification in subdivision 5 is similar to the 2018 clarification to Rule 4.05 of the Minnesota Rules of Civil Procedure. Likewise, subdivision 6 clarifies that in situations where a particular means of service is not required, parties may agree to service by electronic means, such as e-mail or social media. Importantly, Rule 14 of the General Rules of Practice does not permit parties who are required to use electronic service to agree to other means of service.

Rule 16.05 describes various requirements for proof of service. Under General Rule of Practice 14.05, the E-Filing System's service records are sufficient proof of service for all purposes. The E-Filing System's service records are automatically imported into the case court records when documents are simultaneously e-filed and e-served. For documents not simultaneously e-filed and e-served, and for all other methods of service, proof of service must be filed with the court as described in Rule 16.05.

RULE 17. DISCOVERY

Rule 17.01. Disclosure by Petitioner Without Court Order

Upon the request of any party, the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The release of a videotaped statement of a child abuse victim or alleged victim shall be governed by Minnesota Statutes, section 611A.90. The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes, section 626.556, subdivision 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** The petitioner shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.02. Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relate to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 17.03. Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney with or without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 17.04. Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

(a) **Physical and Mental Examinations.**

(1) **Examination by Licensed Professional.** If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's

expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(2) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

(b) **Depositions.**

(1) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(2) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

(i) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing or trial because of the witness' existing physical or mental illness, infirmity, or death;

(ii) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means; or

(iii) upon a showing that the information sought cannot be obtained by other means.

(3) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 12. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to Rule 17.04(b)(2), and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(4) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material (unless the privilege does not apply pursuant to Minnesota Statutes, section 626.556, subdivision 8), so long as it leads to or is reasonably calculated to lead to the discovery of any admissible evidence.

(c) **Reports or Examinations and Tests.** Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Privileged communications may be discoverable in accordance with Minnesota Statutes, section 626.556, subdivision 8.

(d) **Experts.** Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(1) Upon motion, the court may order further discovery by means other than as provided in Rules 17.01 and 17.02

, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result,

(i) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and

(ii) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 17.05. Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 17.06. Regulation of Discovery

Subd. 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identity of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within 14 days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

(a) an order that the matters regarding which the order was made, or the other designated facts, shall be taken to be established for purposes of the proceedings, in accordance with the claim of the party who obtained the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting the disobedient party from introducing designated matters in evidence;

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) an order requiring the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

2019 Advisory Committee Comment

Rule 17 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 17.01(a) is amended to refer to the "release" of a videotaped statement instead of the "copying" of a videotaped statement, because Minnesota Statutes, section 611A.90, refers to the "release" of the statement. Rule 17.04(b)(4) is amended to provide for a consistent "reasonably calculated to lead to the discovery of admissible evidence" standard for questions asked in depositions, instead of the former language: "reasonably calculated to lead to the discovery of any relevant data." Rule 17.04(c) is amended to reflect that privileged communications "may be" discoverable under Minnesota Statutes, section 626.556, subdivision 8, instead of stating that privileged communications "are" discoverable under the statute. Minnesota Statutes, section 626.556, subdivision 8, abrogates some privileges, but does not abrogate all privileges. The amendments are intended to ensure the Rule's language is consistent with the statutory language. The amendments are not intended to substantively change the Rule's meaning.

RULE 18. DEFAULT

Rule 18.01. Failure to Appear

Except as otherwise provided in Rules 47.02, subdivision 1, and 56.02, subdivision 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 44.02 or 53.02, or a notice pursuant to Rule 44.03, 44.04, 53.03, or 53.04, the court may receive evidence in support of the petition or reschedule the hearing.

Rule 18.02. Default Order

If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.

2019 Advisory Committee Comment

Rule 18 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments updated the cross-references in Rule 18.01. The amendments are not intended to substantively change the Rule's meaning.

RULE 19. SETTLEMENT

Rule 19.01. Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of any admission or a settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission

pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 50 or 58.04. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 49 or 58.

Rule 19.02. Objection to Settlement Agreement - Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five days of service of the notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 58.

2019 Advisory Committee Comment

Rule 19 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The amendments delete former Rules 19.01 and 19.02, which described the purpose and contents of settlement agreements. The committee viewed the language as unnecessary and unduly restrictive. Former Rules 19.03 and 19.04 have been recodified as Rules 19.01 and 19.02. The amendments also clarify that the court's obligation is to ensure that each party to the agreement understands the consequences of any admission or settlement agreement.

RULE 20. ALTERNATIVE DISPUTE RESOLUTION

The court may authorize alternative dispute resolution pursuant to Minnesota Statutes, section 260C.163, subdivision 12.

C. PARTIES AND PARTICIPANTS

RULE 21 POST-TRIAL MOTIONS

Rule 21.01. Procedure and Timing

Subd. 1. Timing. All post-trial motions shall comply with Rule 14 and shall be filed with the court and served upon the parties within 10 days of the service of notice by the court administrator of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved. Any response to a post-trial motion shall comply with Rule 14 and shall be filed with the court and served upon the parties within five days of service of the post-trial motion.

Subd. 2. Basis of Motion. A post-trial motion shall be made and decided on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript may be used in deciding the motion.

Subd. 3. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, the affidavits shall be served with the notice of motion. The parties and the county attorney shall have five days after the service in which to serve opposing affidavits. The court may permit reply affidavits so long as the time for issuing a decision is not extended beyond the time permitted in Rule 21.05.

Subd. 4. Hearing. If the trial court grants a hearing on a post-trial motion, the hearing shall take place within 10 days of the date the post-trial motion is filed.

Rule 21.02. New Trial on Court's Own Initiative

Not later than 15 days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 21.03. Amendment of Findings

Upon motion, the court may amend its findings or make additional findings, and may amend the order accordingly. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of sufficiency of the evidence to support the findings may be raised whether or not the party raising the question has made in the district court an objection to the findings or has made a motion to amend the order.

Rule 21.04. Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;

(b) misconduct of counsel;

(c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;

(d) accident or surprise that could not have been prevented by ordinary prudence;

(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(f) errors of law occurring at the trial and objected to at the time, or if no objection need have been made, then plainly assigned in the motion;

(g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or

(h) if required in the interests of justice.

Rule 21.05. Decision

The court shall rule on all post-trial motions within 10 days of the conclusion of the motion hearing, which shall include the time for filing written arguments, if any. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 9.

Rule 21.06. Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

(a) conduct a new trial;

(b) reopen the proceedings and take additional testimony;

(c) amend the findings of fact and conclusions of law;

(d) make new findings and conclusions as required; or

(e) deny the motion.

2019 Advisory Committee Comment

Rule 21 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 45.

RULE 22. RELIEF FROM ORDER

Rule 22.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 22.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding, including a default order, and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than 90 days following the service of notice by the court administrator of the filing of the court's order.

2019 Advisory Committee Comment

Rule 22 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 46. The amendments are not intended to substantively change the rule's meaning. Former Rule 46.03 has been moved to Rule 28.09, which addresses invalidations of actions for violations of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

RULE 23. APPEAL

Rule 23.01. Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 23.02, 23.05, and 23.07, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 23.02. Procedure

Subd. 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person.

Subd. 2. Timing of Filing Notice of Appeal. Any appeal shall be taken within 20 days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 21, or motion for relief under Rule 22 if the motion is filed within the time specified in Rule 21.01, subd. 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subds. 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion. Where the court administrator serves notice of the filing of the order on both a represented party and that party's attorney, the time for appeal shall begin to run based on the service on the party's attorney. Where the order expressly discharges trial counsel, the time for appeal shall begin to run once the party formerly represented by trial counsel has been served.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal, as provided in subdivision 2, the party appealing shall:

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented, including notice of the correct case caption pursuant to Rule 8.08; and

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption pursuant to Rule 8.08.

A notice of appeal shall be accompanied by a copy of the request for transcript required by subdivision 5.

Subd. 4. Notice to Court Administrator. At the same time as the appeal is filed, the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the court of appeals of jurisdiction.

Subd. 5. Request for Transcript. At or before the time for serving the notice of appeal, the appellant shall serve on the court reporter a written request for a transcript. At the same time, the appellant shall also provide the court reporter with a signed Certificate as to Transcript, which the court reporter shall sign and file with the clerk of appellate courts, with a copy to the trial court, unrepresented parties, and counsel of record, within 10 days of the date the transcript was ordered.

Subd. 6. Failure to File Proof of Service. Failure to file proof of service of the notice of appeal does not deprive the court of appeals of jurisdiction over the appeal, but is grounds only for such action as the court of appeals deems appropriate, including a dismissal of the appeal.

Subd. 7. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

Subd. 8. Timing of Briefs. Rule 131.01 of the Rules of Civil Appellate Procedure applies to the timing of briefs in juvenile protection matters, except that the respondent shall serve and file a brief and any addendum within 20 days after service of the brief of the appellant; within 20 days after service of the last appellant's brief, if there are multiple appellants; or within 20 days after delivery of a transcript ordered by respondent pursuant to Civil Appellate Procedure Rule 110.02, subd. 1, whichever is later.

Rule 23.03. Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the juvenile court. The order of the juvenile court shall stand pending the determination of the appeal, but the juvenile court may in its discretion and upon application stay the order. If the juvenile court denies an application for stay pending appeal, upon motion, a stay may be granted by the court of appeals.

Rule 23.04. Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within 15 days after service of the notice of appeal, and shall contain proof of service.

Rule 23.05. Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed 30 days from the date the request for transcript is received.

Rule 23.06. Time for Rendering Decision by Minnesota Court of Appeals

All decisions regarding juvenile protection matters shall be issued by the appellate court within 45 days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

Rule 23.07. Petition in Supreme Court for Review of Decisions of the Court of Appeals

A petition for review shall be filed with the clerk of the appellate courts and served upon the parties within 15 days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within 10 days of service of the petition. The petition for review shall in all other respects be in accordance with Rule 117 of the Rules of Civil Appellate Procedure.

2019 Advisory Committee Comment

Rule 23 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 47. The amendments are not intended to substantively change the rule's meaning.

Minnesota Statutes, section 260C.415, provides that an appeal may be taken "within 30 days of the filing of the appealable order," and "as in civil cases." The timing provisions of Rule 23.02, subd. 2 are a departure from this statute and from the Rules of Civil Appellate Procedure. Significantly, Rule 23.02, subd. 2 shortens the appeal deadline from 30 to 20 days. This change was made in 2009 to expedite the process based on federal standards for permanency timelines and best practices. In re R.K., 901 N.W.2d 156, 162 n.8 (Minn. 2017). The provisions of Rule 23.02 govern over the conflicting statute. In re J.R., Jr., 655 N.W.2d 1, 3 (Minn. 2003). The timing provisions of Rule 23.07 are a departure from the Rules of Civil Appellate Procedure and shorten the deadline for filing a petition with the Supreme Court from 30 to 15 days, and responding to the petition from 20 to 10 days.

Rules 9.03, subd. 1, and 23.02, subd. 2, are amended to make it clear that where the court administrator serves notice of the filing of an order on a party represented by an attorney and on that party's attorney, time begins to run for purposes of appeal when the attorney has been served. This amendment is intended to remove any ambiguity created by the service of a "courtesy" copy of an order directly on the represented party. That potential ambiguity was noted by the Minnesota Supreme Court in In re R.K., 901 N.W.2d 156 (Minn. 2017). A party is represented by an attorney following appearance of the attorney and at all times until the attorney is either replaced by substitution of a new attorney or the attorney withdraws in accordance with Minn. R. Gen. Prac. 105 and Minn. R. Prof. Cond. 1.16, or the attorney's representation is discharged by Rule 36.05 or by order of the court. See, e.g., In re K.M. and T.R., 919 N.W.2d 701 (Minn. Ct. App. 2018).

RULE 24. PARENTAGE MATTER

Rule 24.01. Scope

Subd. 1. Parentage Matter and Juvenile Protection Matter Brought at the Same Time. The establishment of a parent and child relationship or the declaration of the nonexistence of the parent and child relationship shall occur pursuant to the Parentage Act, Minnesota Statutes, sections 257.51 to 257.74, in a separate file in family court. A parentage matter regarding the child may be brought at the same time as a juvenile protection matter.

Subd. 2. Original and Exclusive Jurisdiction in Juvenile Court. The juvenile court has original and exclusive jurisdiction in proceedings described in Minnesota Statutes, section 260C.101.

Subd. 3. Family Court Jurisdiction. When a parentage matter and a juvenile protection matter regarding the same child are pending at the same time, the family court has jurisdiction to determine parentage, the child's name, and child support. The family court shall not make determinations regarding custody or parenting time until the juvenile court makes an order under Rule 24.06.

Rule 24.02. Judicial Assignment and Calendaring

Subd. 1. Assignment and Calendaring. With the consent of the judicial officer assigned to the juvenile protection matter, a parentage matter commenced in family court under the Parentage Act, Minnesota Statutes, sections 257.51 to 257.74, may be assigned to the same judicial officer assigned to the juvenile protection matter regarding the same child. Hearings in the parentage matter may be calendared at the same time as hearings on the juvenile protection matter.

Subd. 2. Communication Between Judicial Officers. When different judicial officers are assigned to handle a juvenile protection matter and a parentage matter regarding the same child, the judicial officers may communicate with each other as permitted under the Code of Judicial Conduct.

Rule 24.03. Applicable Statutes and Rules

Parentage matters under the Parentage Act, Minnesota Statutes, sections 257.51 to 257.74, calendared at the same time as juvenile protection matters regarding the same child continue to be governed by:

(a) the provisions of Minnesota Statutes, section 257.70, limiting access to hearings, and of Rule of Public Access 4, subd. 1(n), limiting access to records;

(b) the right to appointed counsel under Minnesota Statutes, section 257.69;

(c) the Rules of Civil Procedure; and

(d) the Rules of Civil Appellate Procedure.

Rule 24.04. Responsible Social Services Agency to Provide Copy of Petition and Orders to County Child Support Enforcement Agency

Subd. 1. Copy of Petition and Interim Orders Provided to Child Support Agency. The responsible social services agency shall provide a copy of the juvenile protection petition and any orders related to the status and progress of the case plan in the juvenile protection matter to the appropriate county child support enforcement agency whenever parentage is an issue in the juvenile protection matter.

Subd. 2. Copy of Orders to be Provided to County Child Support Enforcement Agency. The responsible social services agency shall provide a copy of any order listed in Rule 24.06 to the

appropriate county child support enforcement agency when the order is issued regarding a child who is the subject of both a juvenile protection matter and a parentage matter.

Rule 24.05. No Extension of Permanency Timelines

The pendency of a parentage matter shall not extend the permanency timelines set forth in these rules and Minnesota Statutes, section 260C.503.

Rule 24.06. Notification to Family Court of Juvenile Protection Orders

When a parentage matter is pending regarding a child who is the subject of a juvenile protection matter and the family court has not issued an order regarding child support, legal and physical custody, or parenting time, the court administrator shall send notification to the family court administrator and the assigned family court judicial officer of the filing of any of the following orders:

(a) an order for guardianship to the Commissioner of Human Services under Minnesota Statutes, section 260C.515, subdivision 3, or 260C.325, in which case the family court may close the parentage file;

(b) an order for permanent legal and physical custody to a relative, including an order for one of the child's parents to be the permanent legal and physical custodian pursuant to Minnesota Statutes, section 260C.515, subdivision 4, in which case the family court may make a determination regarding child support in the parentage matter;

(c) an order for permanent custody to the agency pursuant to Minnesota Statutes, section 260C.515, subdivision 5, or temporary custody to the agency under Minnesota Statutes, section 260C.515, subdivision 6, in which case the family court may make a determination of child support in the parentage matter;

(d) unless preceded by an order under paragraphs (a) to (c):

(1) an order for dismissal of the child from the only or last pending juvenile protection matter under Minnesota Statutes, section 260C.193, subdivision 1, in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; or

(2) an order for termination of juvenile court jurisdiction over the child in the only or last pending juvenile protection matter under Minnesota Statutes, section 260C.193, subdivision 6, paragraph (b) or (c), in which case the family court may make determinations regarding child support, legal and physical custody, and parenting time; and

(e) any other order required by the juvenile court judicial officer to be filed in a pending parentage matter in family court.

2019 Advisory Committee Comment

Rule 24 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 50. The amendments are not intended to substantively change the rule's meaning.

Children involved in juvenile protection matters who have two known, legal parents have significant advantages. When a child does not have a legal relationship with a parent, timely establishment of parentage helps ensure:

(1) that the rights and obligations of both parents are considered throughout the juvenile protection matter, including the agency's obligation, when the child is removed from one parent,

to consider the other parent for day-to-day care of the child (see Minnesota Statutes, section 260C.219, paragraph (a), clause (1));

(2) that maternal and paternal relatives are considered for placement in a timely manner when the child is in foster care (see Minnesota Statutes, sections 260C.212, subdivision 2, and 260C.221); and

(3) a timely permanency decision for a child in foster care through required planning and services for both parents and involvement of relatives (see Minnesota Statutes, sections 260.012; 260C.001, subdivision 2, paragraph (b), clause (7), item (ii); 260C.219; and 260C.221).

The purpose of Rule 24 is to help expedite decision-making in parentage matters in family court when a juvenile protection matter is pending. There are differences between juvenile protection and parentage matters. Judges, professionals, and families involved in both should understand the differences between the two, recognize the benefits to the child in making the two systems work together, and work to deliver known advantages of having two legal parents for the child. Significant dissimilarities in the two types of matters include:

(1) parentage matters are generally non-public under Rule 4, subd. 1(n) of the Rules of Public Access to Records of the Judicial Branch, but juvenile protection matters are generally public under Rule 4, subd. 1(s)(2)(D) of the Rules of Public Access to Records of the Judicial Branch and Rule 8 of the Rules of Juvenile Protection Procedure;

(2) parties under Minnesota Statutes, section 257.57 or 257.60 (parentage matters), and Rules 32 and 33 of the Rules of Juvenile Protection Procedure (juvenile protection matters);

(3) the right to appointed counsel under Minnesota Statutes, sections 257.69 (parentage matters), and 260C.163, subdivision 3 (juvenile protection matters); and

(4) procedural rules, including rules of discovery and rules governing appeals. The Rules of Civil Procedure apply to parentage matters under Minnesota Statutes, section 257.65, but do not apply in juvenile protection matters under Rule 3.01. The Rules of Civil Appellate Procedure apply to both types of matters, but are modified for juvenile protection matters under Rule 23.

Rule 24.01 cites the entire Parentage Act, Minnesota Statutes, sections 257.51 to 257.74. However, the provisions in Minnesota Statutes, section 257.74, relating to adoption do not apply to children under state guardianship, whose matters are governed by Minnesota Statutes, sections 260C.601 to 260C.637.

Rule 24.02 permits the assignment of juvenile protection matters and parentage matters to the same judicial officer, but does not require this because it may not be feasible in courts with separate family and juvenile divisions. When the matters cannot be calendared together and are assigned to different judicial officers, subdivision 2 supports communication between the judicial officers responsible for handling each matter so decision-making is coordinated and timely.

Judicial officers may wish to consider Rule 2.9(3) of the Code of Judicial Conduct:

A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

Judicial officers may also wish to consult the discussion of ethical considerations in Minnesota Board of Judicial Standards Advisory Opinion 2016-2, Judicial Notice of Electronic Court Records in OFP Proceedings.

Rule 24.03 alerts judges, professionals, and others involved in juvenile protection matters and parentage matters of some of the major differences between juvenile protection and parentage matters.

Rule 24.04 assists the responsible social services agency to fulfill its obligation under Minnesota Statutes, section 260C.219, paragraph (a), clause (1), to require the nonadjudicated parent to cooperate with paternity establishment procedures as part of a required case plan. Requiring the responsible social services agency to provide a copy of the petition and orders from juvenile court to the appropriate county child support enforcement agency whenever there is a parentage issue in a juvenile protection matter will support the responsible social services agency and the county child support enforcement agency to work together with the family to resolve parentage issues.

Rule 24.06 is intended to facilitate completion of a parentage matter when the family court judicial officer has deferred decisions in the parentage matter regarding child support, legal and physical custody, and parenting time during a pending juvenile protection matter. When these decisions have been deferred, the parentage matter is not considered complete (see Minnesota Statutes, section 257.66, subdivision 3). So that the parentage matter can be completed, Rule 24.06 requires notification of the specified orders issued in the juvenile protection file to be given to the family court administrator and family court judicial officer assigned to the matter. Local practice will dictate how this notification is made by juvenile court to family court. See also the Advisory Committee Comment to Rule 9.

The orders listed in Rule 24.06 are orders which:

(1) dispose of all issues in the pending parentage matter (an order for guardianship to the Commissioner of Human Services based on termination of parental rights or consent to adopt);

(2) dispose of some of the issues in the pending parentage matter (an order for permanent legal any physical custody to a relative, including a parent, or permanent or temporary custody to the agency that resolves custody and parenting time issues but does not address child support); or

(3) do not dispose of any of the pending issues in the parentage matter (an order for termination or dismissal of jurisdiction).

The required filing of the juvenile protection orders listed in Rule 24.06 and notice to the judicial officer hearing the parentage matter, permits the family court judicial officer to decide any remaining issues regarding child support, legal and physical custody, or parenting time in the parentage matter.

RULE 25. JURISDICTION TO AGE 18 AND CONTINUED REVIEW AFTER AGE 18

Rule 25.01. Continuing Jurisdiction to Age 18

Unless terminated by the court pursuant to Minnesota Statutes, section 260C.193, subdivision 6, paragraph (b), jurisdiction of the court shall continue until the child becomes 18 years of age.

Rule 25.02. Continuing Jurisdiction to Age 19

The court may continue jurisdiction over an individual and all other parties to the proceeding until the individual's 19th birthday as provided by Minnesota Statutes, section 260C.193, subdivision 6, paragraph (c).

Rule 25.03. Continuing Jurisdiction and Review after Child's Eighteen Birthday

Subd. 1. Jurisdiction over Children in Foster Care. Jurisdiction over a child in foster care pursuant to Minnesota Statutes, section 260C.451, shall continue until the child becomes 21 years

of age for the purpose of conducting the reviews required under Minnesota Statutes, section 260C.203; 260C.317, subdivision 3; or 260C.515, subdivision 5 or 6.

Subd. 2. Orders for Guardianship or Legal Custody Terminate. Any order establishing guardianship under Minnesota Statutes, sections 260C.325, and 260C.515, subdivision 3, any legal custody order under Minnesota Statutes, section 260C.201, subdivision 1, and any order for legal custody associated with an order for permanent custody under Minnesota Statutes, section 260C.515, subdivision 5, terminates on the child's 18th birthday. The responsible social services agency has legal responsibility for the individual's placement and care when the matter continues under court jurisdiction pursuant to Minnesota Statutes, section 260C.193, or when the individual and the responsible agency execute a voluntary placement agreement pursuant to Minnesota Statutes, section 260C.229.

Subd. 3. Notice of Termination of Foster Care. When a child in foster care between the ages of 18 and 21 ceases to meet one of the eligibility criteria of Minnesota Statutes, section 260C.451, subdivision 3a, termination of the child's ability to remain in foster care shall be addressed according to the requirements of Minnesota Statutes, section 260C.451, subdivision 8.

Subd. 4. Required Notice to Child. Jurisdiction over a child in foster care pursuant to Minnesota Statutes, section 260C.451, shall not be terminated without giving the child notice of any motion or proposed order to terminate jurisdiction and an opportunity to be heard on the appropriateness of the resolution.

Subd. 5. Terminating Jurisdiction when Child Age 18 or Older Leaves Foster Care. When a child 18 or older in foster care pursuant to Minnesota Statutes, section 260C.451, asks to leave foster care or actually leaves foster care, the court may terminate its jurisdiction.

Subd. 6. Review after Re-Entry into Foster Care after Age 18. When a child re-enters foster care after age 18 pursuant to Minnesota Statutes, section 260C.451, subdivision 6, the child's placement shall be pursuant to a voluntary placement agreement with the child under Minnesota Statutes, section 260C.229. If the child is not already under court jurisdiction pursuant to Minnesota Statutes, section 260C.193, subdivision 6, review of the voluntary placement agreement between the child and the agency shall be according to Minnesota Statutes, section 260C.229, paragraph (b).

2019 Advisory Committee Comment

Rule 25 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 51. The amendments are not intended to substantively change the rule's meaning.

RULE 26. CASE AND OUT-OF-HOME PLACEMENT PLANS

Rule 26.01. Case and Out-of-Home Placement Plans Generally

When the responsible social services agency is the petitioner, the agency shall file with the court and provide to the parties and foster parent a case plan or out-of-home placement plan for the child and the parents or legal custodians, as appropriate. A case plan shall be prepared according to the requirements of Minnesota Statutes, section 245.4871, subdivision 19 or 21; 245.492, subdivision 16; 256B.092; or 260C.212, subdivision 1; whichever is applicable.

Rule 26.02. Child in Court-Ordered Foster Care: Out-of-Home Placement Plan

Subd. 1. Plan Required. When a child is placed in foster care by court order, the responsible social services agency shall file with the court and provide to the parties and foster parents the case

plan or out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1.

Subd. 2. Timing. The out-of-home placement plan shall be filed with the court and provided to the parties and foster parents by the responsible social services agency within 30 days of the court order placing the child in foster care, an order for protective care, or order transferring legal custody to the responsible social services agency, whichever is earliest.

Subd. 3. Content. The out-of-home placement plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian, participated in the preparation of the plan. If a parent or legal custodian refuses to participate in the preparation of the plan or disagrees with the services recommended in the plan by the responsible social services agency, the agency shall state in the plan the attempts made to engage the parent, legal custodian, and child in case planning and note such refusal or disagreement. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When the child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

Subd. 4. Procedure for Approving or Ordering Out-of-Home Placement Plan Prior to Disposition.

(a) **Court's Approval of Jointly Developed Plan.** If the out-of-home placement plan was developed jointly with the parent and in consultation with others required under this Rule and Minnesota Statutes, section 260C.212, subdivision 1, upon the filing of the out-of-home placement plan, together with the information about whether the parent or legal custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and the foster parents have received a copy of the plan, the court may, based upon the allegations in the petition, approve the responsible social services agency's implementation of the plan. The court shall state such approval on the record at a hearing after the plan has been filed with the court and provided to the parties, foster parents, and the child, as appropriate, or serve written notice of the approval of the plan upon all parties and the county attorney. If the court directs that written notice of the approval of the case plan be served, such notice may be served pursuant to Rule 9.03.

(b) **Court's Approval of Plan not Jointly Developed.** When a parent or legal custodian refuses to participate in the preparation of the out-of-home placement plan or disagrees with the services recommended by the responsible social services agency, the agency shall notify the court of the services it will provide or efforts it will attempt under the plan notwithstanding the parent's refusal to cooperate or disagreement with the services. Any party may ask the court to modify the plan to require different or additional services. The court may approve the plan as presented by the agency or may modify the plan to require services requested. The court's approval of the plan shall be based upon the content of the petition or amended petition.

(c) **Voluntary or Court-Ordered Compliance with Plan.** A parent may voluntarily agree to comply with the terms of an out-of-home placement plan filed with the court. Unless the parent voluntarily agrees to the plan, the court may not order a parent to comply with the plan until there is a disposition ordered under Minnesota Statutes, section 260C.201, subdivision 1, and Rule 51. However, the court may find that the responsible social services agency has made reasonable efforts to finalize a permanent placement plan for the child if the agency makes efforts to implement the

terms of an out-of-home placement plan approved under this rule and Minnesota Statutes, section 260C.178, subdivision 7.

(d) **Copy of Plan.** When the out-of-home placement plan is either ordered or approved, a copy of the plan shall be incorporated into the order by reference. The plan need not be served with the order, unless the plan has been modified.

Rule 26.03. Child in Voluntary Foster Care: Out-of-Home Placement Plan

Subd. 1. Child in Voluntary Foster for Reasons Other than for Treatment.

(a) **Timing.** The out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1, shall be filed and served with the petition asking the court to review a voluntary placement of a child in placement when the placement is not due solely to the child's disability under Minnesota Statutes, section 260C.141, subdivision 2, and Rule 61.

(b) **Content.** The plan shall include a statement about whether the child and parent, legal custodian, or Indian custodian participated in the preparation of the plan. The plan shall also include a statement about whether the child's guardian ad litem; the child's tribe, if the child is an Indian child; and the child's foster parent or representative of the residential facility have been consulted in the plan's preparation. The agency shall document whether the parent, legal custodian, or Indian custodian; the child, if appropriate; the child's tribe, if the child is an Indian child; and foster parents have received a copy of the plan. When a child is in foster care due solely or in part to the child's emotional disturbance, the child's mental health treatment provider shall also be consulted in preparation of the plan and the agency shall document such consultation in the plan filed with the court.

Subd. 2. Procedure for Approving Out-of-Home Placement Plan for Child in Voluntary Foster Care The court shall consider the appropriateness of the case plan or out-of-home placement plan in determining whether the voluntary placement is in the best interests of the child as required under Rule 61.02.

Rule 26.04. Child Not in Foster Care: Child Protective Services Case Plan

(a) **Plan Required.** When a petition is filed alleging a child to be in need of protection or services and the child is not in foster care or other out-of-home placement, the responsible social services agency or other agency shall file with the court the statutorily required protective services case plan designed to correct the conditions underlying the allegations that make the child in need of protection or services.

(b) **Timing.** When the child is not in foster care, the statutorily required child protective services plan shall be filed with the petition alleging the child to be in need of protection or services unless the responsible social services agency includes a statement in the petition explaining why it has not been possible to develop the plan, which may include exigent circumstances or the non-cooperation of the child's parents or guardian. The child protective services plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

(c) **Procedure for Ordering Child Protective Services Plan.** When the child is not in foster care or is not recommended to continue in foster care, but the court finds endangerment under Rule 42, the court may order the parties to comply with the provisions of the child protective services plan as a condition of the child remaining in the care of the parent, guardian, or custodian. The court may also order the parties to comply with the provisions of the plan as part of a disposition under Rule 51. When the court orders a child protection services plan, a copy of the plan shall be attached to the court's order and incorporated into it by reference.

Rule 26.05. Child With Disability: Community Support, Individual Treatment, or Multiagency Case Plan

Subd. 1. Procedure. If a child found to be in need of protection or services has a physical or mental disability and a case plan is required under Minnesota Statutes, section 245.4871, subdivision 19 or 21; 245.492, subdivision 16; or 256B.092, the plan shall be filed with the court. Services may be ordered provided to the child according to the provisions of Minnesota Statutes, section 260C.201, subdivision l, paragraph (a), clause (3). When an out-of-home placement plan is required under Rule 26.02 or a child protective services plan is required under Rule 26.04, the requirements of a plan under this paragraph may be included in such plans and need not be a separate document.

Subd. 2. Timing. The case plan shall be provided to the parties by the responsible social services agency at the time it is filed with the court.

2019 Advisory Committee Comment

Rule 26 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 37. Former Rules 37.02, subd. 5, and 37.06 have been deleted because the committee believes they are no longer necessary.

RULE 27. REPORTS TO THE COURT

Rule 27.01. Social Services Court Reports - Generally

Subd. 1. Periodic Reports Required. The responsible social services agency shall submit periodic certified reports to the court regarding the child and family. Whenever possible and appropriate, the agency may combine required reporting provisions under this rule into a single report.

Subd. 2. Timing of Filing and Service. The agency shall file the report with the court and serve it upon all parties at least five days prior to the hearing at which the report is to be considered.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 16.05, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;

(b) include the following demographic information:

(1) the name of the person submitting the report;

(2) the date of the report;

(3) the date of the hearing at which the report is to be considered;

(4) the child's name and date of birth and, in the case of an Indian child, the tribe in which the child is enrolled or eligible for membership;

(5) a statement about whether the child is an Indian child and whether the Indian Child Welfare Act applies;

(6) the names of both of the child's parents or the child's legal custodian; and

(7) the dates of birth of the child's parents if they are minors;

(c) include the date the case was most recently opened for services in the responsible social services agency;

(d) include the date and a brief description of the nature of all other previous case openings for this child and the child's siblings with the responsible social services agency and, if known, case openings for this child and the child's siblings with any other social services agency responsible for providing public child welfare or child protection services;

(e) identify progress made on the out-of-home placement plan or case plan;

(f) address the safety, permanency, and well-being of the child, including the child's:

(1) educational readiness, stability, and achievement; and

(2) physical and mental health; and

(g) request orders related to:

(1) the child's need for protection or services;

(2) implementing requirements of the out-of-home placement plan or case plan; and

(3) the health, safety, and welfare of the child.

Subd. 6. Reports Regarding Siblings. The agency may submit in a single document reports regarding siblings who are subjects of the same juvenile protection matter.

Subd. 7. Information from Collateral Sources. The agency may submit written information from collateral sources, including, but not limited to, physical and mental health assessments, parenting assessments, or information about the delivery of services or any other relevant information regarding the child's safety, health, or welfare in support of the report or as a supplement to the report.

Rule 27.02. Social Services Court Report - Child in Foster Care

Subd. 1. Content. In addition to the requirements of Rule 27.01, each certified report regarding a child in foster care shall include:

(a) the child's placement history, including:

(1) the date the child was removed from the home and the agency's legal authority for removal;

(2) the date the child was ordered placed in foster care, if the child has been ordered in foster care;

(3) the total length of time the child has been in foster care, including all cumulative time in foster care the child may have experienced within the previous five years;

(4) the number of times, if any, the child reentered foster care prior to age 21;

(5) the number of foster care placements the child has been in prior to age 21;

(6) if the child's foster care home has changed since the last court hearing:

(i) the reason for the change in foster care home; and

(ii) how the child's new foster care home meets the child's best interests under Minnesota Statutes, section 260C.212, subdivision 2, paragraphs (a) and (b), or, in the case of an Indian child, how the placement complies with placement preferences established in 25 U.S.C. section 1915; and

(7) if the child is not placed with siblings who are in placement, the efforts the agency has made to place the siblings together; and

(b) services under the out-of-home placement plan, including, as appropriate to the stage of the matter:

(1) a description of the agency's efforts to implement the out-of-home placement plan; and

(2) the parent's progress in complying with the out-of-home placement plan, including anything the parent has done to alleviate the child's need for protection or services; and

(c) a description of:

(1) the case worker visits required under Minnesota Statutes, section 260C.212, subdivision 4a, that occurred since the last court hearing; and

(2) as applicable, the quality and frequency of visitation between the child and the child's:

(i) parents or custodian;

(ii) siblings; and

(iii) relatives; and

(d) when the child is age fourteen or older, progress in implementing each of the elements of the child's independent living plan required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (b), clause (12), and the agency's continued efforts to identify and make the most legally-permanent placement that is in the child's best interest.

Subd. 2. Requested Court Action. The report shall include recommendations to the court for:

(a) modification of the out-of-home placement plan or for actions the parents or legal custodian must take to make changes necessary to alleviate the child's need for protection or services; and

(b) orders necessary for the child's safety, permanency, and well-being, including any orders necessary to promote the child's:

(1) educational readiness, stability, and achievement;

(2) physical and mental health; and

(3) welfare and best interests.

Subd. 3. Reports Under Minnesota Statutes, Chapter 260D. Reports under Minnesota Statutes, chapter 260D, must meet the requirements of Minnesota Statutes, section 260D.06.

Rule 27.03. Social Services Court Report - Reasonable Efforts to Identify and Locate Both Parents of the Child

If both parents of the child have not been identified and located at the time of the first review hearing under Rule 51.03 the agency shall report to the court regarding the diligent efforts required

of the agency to identify and locate the parents pursuant to Minnesota Statutes, section 260C.150, subdivision 3. The agency shall continue to report to the court, on a schedule set by the court, until:

(a) both parents of the child are identified and located; or

(b) the court finds the agency has made diligent efforts to identify and locate the parent as required under Minnesota Statutes, sections 260.012, 260C.178, 260C.201, and 260C.301, subdivision 8, regarding any parent who remains unknown or cannot be located. The court may also find that further reasonable efforts for reunification with the parent who cannot be identified or located would be futile.

Rule 27.04. Social Services Court Report - Due Diligence to Identify and Notify Relatives.

Subd. 1. Timing.

(a) Within three months of the child's placement, the agency shall report to the court regarding the agency's due diligence to identify and notify relatives under Minnesota Statutes, section 260C.221, and, in the case of an Indian child, describe the agency's active efforts to meet the placement preferences of 25 U.S.C. section 1915.

(b) If the court orders continued efforts to identify and locate relatives, the agency shall periodically report on its continuing efforts on a schedule set by the court.

(c) If an Indian child is not placed according to the placement preferences of 25 U.S.C. section 1915, the agency shall periodically report on its efforts to meet the placement preferences until the court makes a finding of good cause under 25 U.S.C. section 1915.

Subd. 2. Content.

(a) **Identification and notice to relatives.** The report shall include information about identification and notice to relatives, including:

(1) a description of the procedures the agency used to identify relatives, including the names of persons who were asked to provide information about the child's relatives and the use of any internet or other resource to identify and locate relatives;

(2) the names of all identified relatives and how the person is related or known to the child or child's family;

(3) whether the agency has an address or other contact information for the relative and the results of using the address or contact information, if any; and

(4) whether the relative was sent the notice and information required under Minnesota Statutes, section 260C.221, paragraph (a), and the nature of any resulting contact from the relative back to the agency.

(b) **Consideration of relatives for placement.** The report shall include information about how the agency considered relatives for placement, including:

(1) whether identified relatives were considered for placement under Minnesota Statutes, section 260C.212, subdivision 2, paragraphs (a) and (b), and the result of that consideration;

(2) a description of the process the agency used to consider relatives for placement, including who was consulted, whether the agency used family group decision-making or a family conference, or any other process to assist with consideration of relatives;

(3) in the case of an Indian child, the efforts the agency made to work with the child's tribe to identify relatives and the results of those efforts;

(4) a copy of or reference to the documentation from the out-of-home placement plan regarding how the relative with whom the child is placed meets the placement factors at Minnesota Statutes, section 260C.212, subdivision 2, paragraph b, or, if placement is not with a relative, why a relative placement was not appropriate; and

(5) what future consideration for placement of the child will be given to relatives.

(c) **Engagement in planning.** The report shall include a description of how the agency will engage relatives in continued support for the child and family and involvement in permanency planning for the child as required under Minnesota Statutes, section 260C.221.

Subd. 3. Requested Findings; Plan for Active Efforts; Orders.

(a) **Reasonable Efforts.** Pursuant to Minnesota Statutes, section 260C.221, paragraph (f), the agency may request a finding that the agency has made reasonable efforts to identify and notify relatives.

(b) **Active Efforts.** In the case of an Indian child, if the child's placement is not according to the preferences of 25 U.S.C. section 1915, the agency shall report its plan for continued efforts to place the child according to the preferences or request a finding of good cause under 25 U.S.C. section 1915.

(c) **Orders.** When appropriate to assist the agency in its duties for reasonable and active efforts, the agency may ask the court for orders that assist in the identification and location of relatives.

Rule 27.05. Social Services Court Report - Permanency Progress Review Hearing

Subd. 1. Content.

(a) **Progress towards permanency.** In addition to the requirements of Rules 27.01 and 27.02 regarding the permanency progress review hearing, the report shall address the elements in Minnesota Statutes, section 260C.204, paragraph (a).

(b) **Concurrent efforts on adoption and referrals under the Interstate Compact on the Placement of Children.** As appropriate, the report shall also address any concurrent reasonable efforts required under Minnesota Statutes, section 260C.605 and information on any referrals that have been made or will be made under Minnesota Statutes, section 260.851, the Interstate Compact on the Placement of Children.

Subd. 2. Requested Court Order Regarding Permanency Progress. The report shall include a request for appropriate orders under Minnesota Statutes, section 260C.204, paragraph (c) to:

(a) return the child home;

(b) continue reasonable efforts for reunification or active efforts to prevent the breakup of the Indian family; or

(c) plan for the legally permanent placement of the child away from the parent, identify permanency resource homes that will be the legally permanent home if the child cannot return to the parent, and file a permanency petition under Minnesota Statutes, section 260C.204, paragraph (d), clause (2) or (3).

Rule 27.06. Social Services Court Report - Child on Trial Home Visit

Subd. 1. Timing and Content. In addition to the requirements of Rules 27.01 and 27.02, when a hearing is required under Minnesota Statutes, section 260C.503, subdivision 3, paragraph (c), because the child is on a trial home visit at the time for a required permanency hearing, the agency shall serve and file a report regarding the child's and parent's progress during the trial home visit and the agency's reasonable efforts to finalize the child's safe and permanent return to the care of the parent. When a trial home visit is terminated, the agency shall report to the court as required under Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (3), items (v) and (vi).

Subd. 2. Requested Court Orders. The report shall include recommendations, if any, for modification to the services and supports in place, and for any orders necessary for the safety, protection, well-being, or best interests of the child during the trial home visit. The agency shall also recommend whether the trial home visit should continue as provided in Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (3).

Rule 27.07. Social Services Court Report - Child Under State Guardianship

Subd. 1. Timing. When a hearing is required under Minnesota Statutes, section 260C.607, to review the progress of the matter towards finalized adoption and the child's well-being, in addition to the requirements of Rules 27.01 and 27.02, and as appropriate to the stage of the matter, the agency shall file and serve a report addressing the elements of Minnesota Statutes, section 260C.607, subdivision 4.

Subd. 2. Content.

(a) **Information for Notice of Hearing.** In a document attached to the report, filed as a confidential document under Rule 8.04, subd. 2(o), the agency shall include the following information required for the court to provide notice of the hearing:

(1) the child's current address, if the child is age 10 and older;

(2) the names and addresses of each relative of the child who has responded to the agency's notice under Minnesota Statutes, section 260C.221, paragraph (g), indicating a willingness to provide an adoptive home for the child unless the relative has been previously ruled out by the court as a suitable foster parent or permanency resource for the child;

(3) the name and address of the current foster or adopting parent of the child;

(4) the name and address of any foster or adopting parents of siblings of the child; and

(5) the name and address of an Indian child's tribe.

(b) **Progress towards Finalized Adoption.** The report shall describe the agency's reasonable efforts to finalize the child's adoption as required in Minnesota Statutes, section 260C.605, including:

(1) the steps taken to identify and place the child in a home that will timely commit to adopt the child, including:

(i) the status of any relative search under Minnesota Statutes, section 260C.221;

(ii) whether any relative of the child has expressed interest in adopting the child, and, if so, the agency's consideration of the relative according to the requirements of Minnesota Statutes, section 260C.212, subdivisions 2, paragraphs (a) and (b);

(iii) the progress of any study required under Minnesota Statutes, section 260.851, the Interstate Compact on the Placement of Children;

(iv) whether child-specific recruitment efforts are necessary and, if so, the nature and timing of those efforts; and

(2) if the child is placed with a prospective adoptive home, expected dates for the following:

(i) completion of the adoption study required under Minnesota Statutes, section 260C.611;

(ii) the execution of the adoption placement agreement;

(iii) the required notice under Minnesota Statutes, section 260C.613, subdivision 1, paragraph (c);

(iv) the execution of an agreement regarding adoption assistance under Minnesota Statutes, chapter 259A, or Northstar Adoption Assistance under Minnesota Statutes, chapter 256N, including the specific reasons for any delay in executing the agreement;

(v) the filing of the adoption petition; and

(vi) the final hearing on the adoption petition.

(c) **Child Well-Being.** In addition to reporting on the agency's efforts to finalize adoption, the report shall address the child's well-being, including:

(1) how the child's placement is meeting the child's best interests;

(2) the quality and frequency of visitation and contact between the child and siblings and, if applicable, relatives;

(3) how the agency is meeting the child's medical, mental, and dental health needs;

(4) how the agency is planning for the child's education pursuant to Minnesota Statutes, section 260C.607, subdivision 4, paragraph (a), clause (2); and

(5) when the child is age 14 or older, progress in implementing each of the elements of the child's independent living plan required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (b), clause (12), while the agency continues to make reasonable efforts to finalize an adoption for the child.

Subd. 3. Requested Findings and Orders. The agency may request findings pursuant to Minnesota Statutes, section 260C.607, that the agency is making reasonable efforts to finalize the adoption of the child as appropriate to the stage of the case and may request any order that will assist in achieving a finalized adoption for the child.

Subd. 4. Adoption Placement Agreement.

(a) **Notice of Agreement.** When the agency has a fully executed adoption placement agreement under Minnesota Statutes, section 260C.613, subdivision 1, the agency shall report to the court that the adoptive placement has been made and the adoption placement agreement regarding the child is fully executed. The agency shall file and serve on the parties entitled to notice under Minnesota Statutes, section 260C.607, subdivision 2, a copy of the court report together with notice that there is a fully executed adoption placement agreement. The notice shall include a statement that if a relative or foster parent is requesting adoptive placement of the child, the relative or foster

parent has 30 days after receiving the notice to file a motion for an order for adoption placement of the child under Minnesota Statutes, section 260C.607, subdivision 6.

(b) **Notice of Termination of Agreement.** In the event an adoption placement agreement terminates, the agency shall report that the agreement and adoptive placement have terminated. The agency shall file and serve a copy of the report upon the parties entitled to notice under Minnesota Statutes, section 260C.607, subdivision 2, and shall send a copy of the report to the Commissioner of Human Services by U.S. mail.

Subd. 5. Report upon Finalized Adoption. When the adoption of a child who is under the guardianship of the commissioner has been finalized, the agency shall file and serve a report stating:

(a) the date the adoption was finalized;

(b) the state and county where the adoption was finalized; and

(c) the name of the judge who finalized the adoption.

Rule 27.08. Social Services Court Report - Child Not in Foster Care

In addition to the requirements of Rule 27.01, a certified report for a child not in foster care shall include the following:

(a) the child's residence and whether the child's residence has changed since the last court hearing;

(b) as applicable, a description of:

(1) the services provided to the child and parent and the agency's efforts to implement the case plan; and

(2) the parents' or legal custodian's and child's progress in complying with the plan, including anything the parents or legal custodian, and child, if appropriate, have done to alleviate the child's need for protection or services; and

(c) recommendations to the court for modification of the plan or for actions the parent or legal custodian must take to provide adequate protection or services for the child.

Rule 27.09. Social Services Court Report - Between Disposition Review Hearings

Once disposition has been ordered pursuant to Minnesota Statutes, section 260C.201, and Rule 51, the responsible social services agency, through the county attorney, may ask the court for orders related to meeting the safety, protection, and best interests of the child based upon a certified report that states the factual basis for the request. Such reports shall be filed with the court, together with proof of service upon all parties, by the responsible social services agency. Within five days of service of the report, any party may request a hearing regarding the agency's report. Pending hearing, if any, upon two days' notice and based upon the report, the court may issue an order that is in the best interests of the child. Upon a finding that an emergency exists, the court may issue a temporary order that is in the best interests of the child.

Rule 27.10. Objections to Agency's Report or Recommendations

A party may object to the content or recommendations of the responsible social services agency's report by submitting a written objection either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minnesota Statutes, section

358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the agency's report and recommendations may also be stated on the record, but the court shall give the agency a reasonable opportunity to respond to the party's objection.

27.11. Reports to the Court by Child's Guardian ad Litem

Subd. 1. Periodic Reports Required. The guardian ad litem for the child shall submit periodic certified written reports to the court.

Subd. 2. Timing of Filing and Service. The guardian ad litem shall file the report with the court and serve it upon all parties at least five days prior to the hearing at which the report is to be considered.

Subd. 3. Supplementation of Report. Reports may be supplemented at or before the hearing either orally or in writing.

Subd. 4. Certificate of Distribution. Each report shall contain or have attached the certificate of distribution required under Rule 16.05, subd. 2.

Subd. 5. Report Content. Each report shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief, and shall:

(a) be captioned in the name of the case and include the court file number;

(b) include the following information:

(1) the name of the person submitting the report;

(2) the names of the child's parents or legal custodians;

(3) the date of the report;

(4) the date of the hearing at which the report is to be considered;

(5) the date the guardian ad litem was appointed by the court;

(6) a brief summary of the issues that brought the child and family into the court system;

(7) a list of the resources or persons contacted who provided information to the guardian ad litem since the date of the last court hearing;

(8) a list of the dates and types of contacts the guardian ad litem had with the child since the date of the last court hearing;

(9) a list of all documents relied upon when generating the court report;

(10) a summary of information gathered regarding the child and family since the date of the last hearing relevant to the pending hearing;

(11) a list of any issues of concern to the guardian ad litem about the child's or family's situation; and

(12) a list of recommendations designed to address the concerns and advocate for the best interests of the child.

Subd. 6. Objections to Guardian Ad Litem's Report or Recommendations. Any party may object to the content or recommendations of the guardian ad litem by submitting a written objection

either before or at the hearing at which the report is to be considered. The objection shall include a statement certifying the content as true based upon personal observation, first-hand knowledge, or information and belief. The certified objection shall be supported by a statement made under oath or penalty of perjury under Minnesota Statutes, section 358.116, stating the party's factual basis for the objection and may state other or additional facts on information and belief and argument that the court should consider in making its determinations or orders. An objection may also be supported by reports from collateral service providers or assessors. Objections to the guardian ad litem's report and recommendations may also be stated on the record, but the court shall give the guardian ad litem a reasonable opportunity to respond to the party's objection.

2019 Advisory Committee Comment

Rule 27 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 38.

C. Juvenile Protection Matters Governed by the Indian Child Welfare Act

RULE 28. GENERAL RULES FOR MATTERS GOVERNED BY THE INDIAN CHILD WELFARE ACT

Rule 28.01. Purpose

The Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901 to 1963, establishes minimum federal standards for the removal of Indian children from their families and the placement of Indian children in foster or adoptive homes. The Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, sections 260.751 to 260.835, provides state standards to protect the long-term best interests of Indian children, their families, and the child's tribe. This section of these rules provides procedures for the application of ICWA and MIFPA in juvenile protection matters concerning an Indian child.

Rule 28.02. Party Status of Tribes

Pursuant to Rule 32.01, subd. 1, an Indian child's tribe is a party to a case of an Indian child. Tribes do not need to file a motion to obtain party status.

Rule 28.03. Tribal/State Agreement

The Indian Child Welfare Act, 25 U.S.C. section 1919, provides that states and Indian tribes may enter into agreements with respect to the care and custody of Indian children and jurisdiction over child custody proceedings. The State of Minnesota has entered into a Tribal/State agreement which shall be available on the Minnesota Judicial Branch's website (www.mncourts.gov).

Rule 28.04. Higher Standard Under ICWA

Subd. 1. Greater Protection under State Law. The Indian Child Welfare Act (ICWA), 25 U.S.C. section 1921, provides that if state or federal law establishes a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the Indian Child Welfare Act, the court shall apply the state or federal standard. The Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, sections 260.751 to 260.835, may provide a higher level of protection than ICWA in ICWA proceedings.

Subd. 2. Active Efforts. Both ICWA and MIFPA require the court to make findings regarding active efforts, as defined in Rule 2.01(1), throughout the proceedings. The active efforts standard provides a higher level of protection than reasonable efforts. Active efforts include reasonable efforts, but reasonable efforts may be found without meeting the threshold for active efforts.

Subd. 3. Standard of Proof. Pursuant to ICWA, 25 U.S.C. section 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt. In all other juvenile protection matters concerning an Indian child, the standard of proof is clear and convincing evidence.

Subd. 4. Notice Standards. ICWA, 25 U.S.C. section 1912(a), and Rule 30.01 require the petitioner to provide an additional notice of the proceedings to the parent, Indian custodian, and the Indian child's tribe.

Subd. 5. Placement Preferences. The court shall follow the order of placement preferences required by ICWA, 25 U.S.C. section 1915, when placing an Indian child. The court may only place an Indian child outside of the order of placement preferences on a written finding of good cause pursuant to MIFPA, Minnesota Statutes, section 260.771, subdivision 7.

Subd. 6. Appointment of Counsel. Appointment of counsel for an Indian child, or for a parent or Indian custodian of an Indian child, who is the subject of a juvenile protection matter, shall be pursuant to ICWA, 25 U.S.C. section 1912(b).

Rule 28.05. Best Interests of an Indian Child

In proceedings involving an Indian child, the best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. sections 1901 to 1963. "Best interests of an Indian child" is defined in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 2a.

Rule 28.06. Qualified Expert Witness Requirement

The Indian Child Welfare Act, 25 U.S.C. section 1912, and the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.771, subdivision 6, require testimony from a qualified expert witness, as defined in Rule 2.01(29), before making the findings required by subd. 1 and subd. 2 of this rule.

Subd. 1. Foster Care Placement. In the case of an Indian child, foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 2. Termination of Parental Rights. In the case of an Indian child, termination of parental rights shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Rule 28.07. Particularized Findings in Cases Involving an Indian Child

Subd. 1. Emergency Proceedings. In emergency proceedings involving an Indian child, the court shall make initial findings regarding whether active efforts were made by the social services agency, pursuant to Minnesota Statutes, section 260.762, to prevent the child's out-of-home placement. Emergency proceedings shall not be continued for more than 30 days unless the court makes findings pursuant to the Indian Child Welfare Act regulations, 25 C.F.R. section 23.113(e).

Subd. 2. Emergency Removal and Placement Authority for Indian Child Ward, Resident, or Domiciliary.

(a) **Finding.** If the district court finds from review of the petition or other information that an Indian child resides or is domiciled on an Indian reservation or that an Indian child is a ward of tribal court but is temporarily located off the reservation, the district court may order emergency

removal of the child from the child's parent or Indian custodian and emergency out-of-home placement.

(b) **Required Actions for Ward of the Tribal Court.** If the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, the court shall order that the child be expeditiously returned to the jurisdiction of the Indian child's tribe and shall consult with the tribal court regarding the child's safe transition pursuant to Rule 31.02, subd. 1.

Subd. 3. Child in Need of Protection or Services Proceedings. In a child in need of protection or services proceeding, the standard of proof is clear and convincing evidence. Foster care placement shall not be ordered in the absence of testimony of at least one qualified expert witness that supports a determination that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Subd. 4. Permanency Proceedings.

(a) **Termination of Parental Rights.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(f), in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt. The court shall make specific findings regarding the following:

(1) **Active Efforts.** That active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) **Serious Emotional or Physical Damage.** That the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, as supported by qualified expert witness testimony in the termination of parental rights proceeding pursuant to Rule 28.06.

(b) **Other Permanency Proceedings.** In permanency proceedings involving an Indian child other than termination of parental rights, the standard of proof is clear and convincing evidence. The court shall make specific findings regarding the following:

(1) **Active Efforts.** That active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) **Serious Emotional or Physical Damage.** That the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, as supported by qualified expert witness testimony pursuant to Rule 28.06.

Rule 28.08. Voluntary Termination of Parental Rights Under ICWA

When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. section 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

Subd. 1. Procedures for Consent. The consent to terminate parental rights by the parent shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The

court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood.

Subd. 2. Timing of Consent. Any consent to termination of parental rights given prior to, or within ten days after, the birth of the Indian child shall not be valid.

Subd. 3. Parent's Right to Withdraw Consent. Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the filing of the final order terminating the parent's rights.

Rule 28.09. Invalidation of Action Under ICWA

Subd. 1. Petition or Motion. Pursuant to 25 U.S.C. section 1914, any Indian child who is the subject of any action for foster care placement or termination of parental rights, any parent or Indian custodian from whose custody an Indian child was removed, or the Indian child's tribe may seek to invalidate the action upon a showing that the action violates the Indian Child Welfare Act, 25 U.S.C. sections 1911 to 1913.

(a) **Motion.** A motion to invalidate may be brought regarding a pending juvenile protection matter.

(b) **Petition.** A petition to invalidate may be brought regarding a juvenile protection matter in which juvenile court jurisdiction has been terminated.

Subd. 2. Form and Service. A motion or petition to invalidate shall be in writing pursuant to Rule 14.01 and shall be filed and served pursuant to Rule 14.02. Both a motion and a petition to invalidate shall be processed by the court as a motion. Upon receipt of a petition to invalidate a proceeding in which juvenile court jurisdiction has been terminated, the court administrator shall re-open the original juvenile protection file related to the petition.

Subd. 3. Hearing. Within 30 days of the filing of a motion or petition to invalidate, the court shall hold an evidentiary hearing of sufficient length to address the issue raised in the motion or petition. A motion filed 30 or more days prior to trial shall be heard prior to trial and the decision shall be issued prior to trial. A motion filed less than 30 days prior to trial shall not delay commencement of the trial and the decision shall be issued as part of the trial decision.

Subd. 4. Findings and Order. Within 15 days of the conclusion of the evidentiary hearing on the motion or petition to invalidate, the court shall issue findings of fact, conclusions of law, and an order regarding the petition or motion to invalidate.

2019 Advisory Committee Comment

"Juvenile Protection Matters Governed by the Indian Child Welfare Act" is a new section in the Rules of Juvenile Protection Procedure. The rules in this section were added in 2019 as part of a revision of the rules. This section was added to consolidate rules for proceedings governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901 to 1963, and the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, sections 260.751 to 260.835. The ICWA rules have been updated to reflect the 2016 BIA ICWA regulations, and the 2015 amendments to MIFPA.

Rule 28.04, subd. 2, states that "[a]ctive efforts include reasonable efforts, but reasonable efforts may be found without meeting the threshold for active efforts." This rule contemplates situations where the threshold for active efforts has not been met, but reasonable efforts have occurred, and Title IV-E funding can be made available.

Rule 28.06 recognizes the unique requirements for and qualifications of the qualified expert witness whose testimony must be presented to the court before the court may order foster care placement or termination of parental rights under ICWA. Compliance with the requirement for a qualified expert witness is best achieved by timely notice to the child's tribe, ensuring that the county agency works with the child's tribe to discuss the need for placement, identifying extended family who can serve as placement resources and support for the family, ensuring that culturally appropriate services are delivered to the family, and requesting qualified expert witness testimony from the tribe or elsewhere. When the court has determined that ICWA applies, but the child's tribe has not participated in planning for the child, or when the child's tribe does not support placement of the child in foster care or termination of parental rights, the requirements of this rule may be met by a person who meets the criteria of Rule 2.01(29).

Rules 28.06 and 28.07 state that the qualified expert witness's testimony must support a determination that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Minnesota Supreme Court has held that ICWA and MIFPA, 25 U.S.C. section 1912(f) and Minnesota Statutes, section 260.771, subdivision 6, paragraph (a), require the qualified expert witness testimony to support this determination, but that the qualified expert witness is not required to "opine on the ultimate issue of whether the State met its burden of proof" to show a likelihood of serious emotional or physical damage to the child. In re S.R.K. and O.A.K., 911 N.W.2d 821, 829 (Minn. 2018) (quotations and citations omitted). In S.R.K., the Minnesota Supreme Court interpreted the requirements of ICWA and MIFPA as they apply to termination of parental rights proceedings. 911 N.W.2d at 827-28 & n.6. Rules 28.06 and 28.07 apply the same requirement to foster care placements and to terminations of parental rights. The committee believes this is appropriate, because the language in ICWA and MIFPA requiring qualified expert witness testimony for foster care placements (25 U.S.C. section 1912(e) and Minnesota Statutes, section 260.771, subdivision 6, paragraph (a)) is identical to the language, analyzed in S.R.K, requiring qualified expert witness testimony for terminations of parental rights (25 U.S.C. section 1912(f) and Minnesota Statutes, section 260.771, subdivision. 6, paragraph (a)).

Grounds for Invalidation. Rule 28.09 establishes a procedure for filing a petition or motion to invalidate an action under ICWA. 25 U.S.C. section 1914. Section 1914 of ICWA permits an Indian child, the Indian child's parent or Indian custodian, or the Indian child's tribe to petition the court to invalidate any action for foster care placement or termination of parental rights upon a showing that the action violated ICWA section 1911 (dealing with exclusive jurisdiction and transfer to tribal court), section 1912 (dealing with notice to the Indian child's tribe regarding the district court proceedings, appointment of counsel, examination of reports, and testimony of a qualified expert witness), or section 1913 (dealing with voluntary consent to foster care placement and termination of parental rights). Section 1914 of ICWA is silent about the time for bringing a petition to invalidate, the relief available, and whether relief is available even if there was no objection below.

RULE 29. COURT'S INQUIRY OF INDIAN ANCESTRY AND HERITAGE

Rule 29.01. Initial Hearing

Pursuant to 25 C.F.R. section 23.107(a), at the initial hearing in any juvenile protection matter, the court shall make a thorough on-the-record inquiry as to whether the child has Indian ancestry or heritage. If, upon such inquiry, the court finds that an Indian tribe has determined that a child is an Indian child, the court shall comply with the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and these rules. If the court is unable to make such a finding but has reason

to know that the child is an Indian child, the court shall direct the petitioner to further investigate the child's ancestry or heritage and shall treat the matter as if ICWA applies pending the investigation.

Rule 29.02. Court's Duty of Continued Inquiry

Unless the court has made a finding that the child is an Indian child, the court shall at all stages in the proceedings, continue to inquire whether the child has Indian ancestry or heritage. If, at any time during the proceedings, the court has reason to believe that the child has Indian ancestry or heritage, the court shall direct the petitioner to continue to investigate whether the child is an Indian child.

2019 Advisory Committee Comment

It is important for the court to make a thorough inquiry regarding a child's ancestry or heritage to avoid proceeding in a case without properly applying the Indian Child Welfare Act (ICWA), which can have serious repercussions for all parties. A continued inquiry can provide additional information about whether ICWA applies, especially from parties or participants who did not attend the initial hearing.

In cases where the court has reason to know that ICWA applies, the court shall proceed pursuant to the requirements of ICWA unless or until a determination is otherwise made in order to fulfill the congressional purposes of ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. section 1914, 25 C.F.R. section 23.107(b)(2), and Rule 28.09.

RULE 30. NOTICE RESPONSIBILITIES UNDER THE INDIAN CHILD WELFARE ACT

Rule 30.01. Notice by Petitioner

Subd. 1. Generally. In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the petitioner commencing a child custody proceeding shall notify the parent, Indian custodian, and the Indian child's tribe of the pending proceedings and of the right of intervention. Notice shall be pursuant to Indian Child Welfare Act, 25 U.S.C. section 1912(a), and the Indian Child Welfare Act regulations, 25 C.F.R. section 23.11. In addition, the court may direct personal service on the parent and Indian custodian. Each notice shall be filed with the court together with any return receipts or other proof of service.

Subd. 2. Identity or Location Unknown. Pursuant to 25 C.F.R. section 23.111(e), if the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Bureau of Indian Affairs Regional Director in like manner, who shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

Subd. 3. Timing of Proceedings. No foster care placement or termination of parental rights proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

Rule 30.02. Notice by Court

When a court has reason to believe that a child placed in emergency protective care is an Indian child, the court administrator or a designee shall notify the tribal social services agency of the date, time and location of the emergency protective care hearing as required by the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.761, subdivision 2, paragraph (c).

2019 Advisory Committee Comment

There are multiple notice requirements in Indian Child Welfare Act (ICWA) cases. In addition to the notice requirements listed in the rule above, the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, section 260.761, provides additional notice requirements for local social services agencies.

The petitioner's notice requirement in ICWA, 25 U.S.C. section 1912(a), and the ICWA regulations, 25 C.F.R. section 23.11, while substantially similar, do have inconsistencies. For example, ICWA states that notice shall be by registered mail. The ICWA regulations state that notice shall be by registered or certified mail, and that personal service does not replace the registered or certified mail requirement. See 25 C.F.R. section 23.111. The committee contemplates situations where personal service on a parent is made at an initial hearing, but service on the parent by registered or certified mail is not possible. The committee notes that service by registered or certified mail on a tribe offers protections that personal service may not, including ensuring that service is made on the correct contact. The committee recommends that courts review service issues on a case-by-case basis, and make a clear record of efforts to provide notice in ICWA matters.

The 2016 BIA ICWA regulations, 25 C.F.R. section 23.11(b)(2), provide an incorrect address for the Minneapolis Regional Director of the Bureau of Indian Affairs. The office location is available at www.bia.gov.

The requirement for the petitioner to serve the ICWA notice is separate from the requirement for court staff to serve the summons and petition.

Emergency Protective Care Placement Pending ICWA Notice. While both ICWA and Minnesota law require notice to the Indian child's parent or Indian custodian and Indian child's tribe regarding the child custody proceeding, 25 U.S.C. section 1922 provides that a state may take emergency action to protect an Indian child who is domiciled or resides on a reservation but is temporarily located off the reservation. While there is no such explicit provision in ICWA regarding an Indian child who is not domiciled on or a resident of a reservation, by analogy there is general recognition that the state may take emergency action to protect an Indian child who is not domiciled on or resident of a reservation. It is not possible to send the ICWA notice referred to in Rule 30.01 and meet the timing requirements of 25 U.S.C. section 1912(a) before the emergency removal hearing. The ICWA notice that the court will direct be provided under Rule 42.09(f) is required under Rule 30.01 before the Admit/Deny Hearing may be held. The timing of the Admit/Deny Hearing in matters governed by ICWA may be different due to the notice requirement of Rule 30.01.

RULE 31. TRANSFER TO CHILD'S TRIBE

Rule 31.01. Transfer of Juvenile Protection Matter to the Tribe

Subd. 1. Motion or Request to Transfer. At any stage in the proceedings, an Indian child's parent, Indian custodian, or tribe may request transfer of the juvenile protection matter to the Indian child's tribe by:

(a) filing with the court and serving a motion or any other written document; or

(b) making an on-the-record request which shall be reflected in the court's findings.

Subd. 2. Service and Filing Requirements for Motion, Request, or Objection to Transfer Matter to Tribe.

(a) When a motion or other written document is filed pursuant to subdivision 1(a), the service and notice provisions of Rule 14.02, subd. 1, apply. Service and notice shall also made upon parents who are participants to the proceedings.

(b) When an on-the-record request is made pursuant to subdivision 1(b), the objection and continuance provisions of Rule 14.02, subd. 3, apply.

Subd. 3. Transfer Required Absent Objection by Parent or Good Cause Finding. Upon motion or request of an Indian child's parent, Indian custodian, or tribe pursuant to subdivision 1, the court shall issue an order transferring the juvenile protection matter to the Indian child's tribe absent objection by either parent pursuant to subdivision 4 or a finding of good cause to deny transfer pursuant to subdivision 6(b), and shall proceed pursuant to Rule 31.02. The order transferring the juvenile protection matter to the Indian child's tribe shall order jurisdiction of the matter retained pursuant to subdivision 7 until the Indian child's tribe exercises jurisdiction over the matter.

Subd. 4. Objection to Transfer by Parent. A parent of an Indian child may object to transfer of a juvenile protection matter to the Indian child's tribe.

(a) **Form of Objection.** The parent's objection shall be in writing or stated on the record. The writing may be in any form sufficient for the court to determine that the parent objects to the request to transfer the matter to the Indian child's tribe.

(b) **Timing of Filing and Service.** Any written objection shall be filed with the court and served upon those who are served with the motion pursuant to Rule 14.02, subd. 1, either:

(1) within 15 days of service of the motion, written request, or on-the-record request to transfer the juvenile protection matter to the Indian child's tribe under subdivision 1; or

(2) at or before the time scheduled for hearing on a motion to deny transfer for good cause, if any, under subdivision 6.

(c) **Method of Filing and Service.** Any written objection by a Registered User of the E-Filing System shall be served upon another Registered User in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. All other service of the written objection shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served. Service of the written objection shall be accomplished by the parent's attorney or by the court administrator when the parent is not represented by counsel.

(d) **No Hearing Required.** A hearing on an objection to transfer by parent is not required.

(e) **Decision and Order.** Upon objection by a parent, the court shall deny the request to transfer the juvenile protection matter to the Indian child's tribe and issue its findings and order pursuant to Rule 9.01. The court shall include a parent's on-the-record objection to the transfer as a finding in its order denying the motion to transfer.

Subd. 5. Request to Deny Transfer by Party Who is Not a Parent.

(a) **Party Who is Not a Parent.** A party who is not a parent may request that the juvenile protection matter not be transferred to the Indian child's tribe by filing with the court and serving a notice of motion and motion pursuant to subdivision 1(a) and Rule 14 within 15 days of receiving the request to transfer the matter to the tribe. The party opposing transfer shall provide a written explanation of the reason for the opposition.

(b) **Establishment of Good Cause.** A party who is not a parent opposing transfer of the juvenile protection matter has the burden of establishing good cause not to transfer. The request to deny transfer shall be scheduled for hearing pursuant to subdivision 6.

Subd. 6. Hearing on Request to Deny Transfer to Tribal Court.

(a) **Hearing.** Within 15 days of the filing of a written request to deny transfer of the juvenile protection matter to the Indian child's tribe, the court shall conduct a hearing to determine whether good cause exists to deny the transfer to the tribe pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1911(b), and the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.771, subdivision 3a.

(b) **Decision.** The court shall make findings regarding the existence of good cause to deny transfer. If good cause to deny transfer is not found, the court shall order the matter transferred to tribal court and shall proceed pursuant to Rule 31.02. If good cause to deny transfer is found, the court may either deny the request to transfer or order the matter transferred to tribal court.

(c) **Order.** The court shall issue its findings and order pursuant to Rule 9.01.

Subd. 7. Retention of District Court Jurisdiction until Notice from the Indian Child's Tribe.

(a) **District Court Jurisdiction.** The district court shall retain jurisdiction over the juvenile protection matter by written order until the district court judge receives information from the tribal court that the tribe has exercised jurisdiction over the matter. Pending exercise of jurisdiction by the Indian child's tribe, the district court has continued authority to:

(1) approve or modify services to be provided to the child and the child's family; or

(2) approve or modify the case plan; and

(3) make other orders that ensure a smooth transition of the matter to the tribe.

(b) **Hearings in District Court Pending Dismissal.** The district court may conduct hearings as required by Minnesota Statutes, chapter 260C, and these rules and shall conduct a review hearing at least every ninety days until the Indian child's tribe exercises jurisdiction over the juvenile protection matter or the tribal court declines the transfer in response to the district court's order to transfer the matter to the tribe. Such hearings shall be for the purpose of reviewing the provision of services under the case plan or the provision of services to the child and family and to update the court regarding exercise of jurisdiction over the matter by the Indian child's tribe.

(c) **Exercise of Jurisdiction by Indian Child's Tribe.** The district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter. The district court shall acknowledge receipt of the communication and the exercise of jurisdiction over the matter by the tribe by forwarding to the tribal court of, or designated by, the Indian child's tribe an order terminating the district court's jurisdiction over the matter under paragraph (e).

(d) **Declination of Transfer by Tribal Court.** Upon declination of the exercise of jurisdiction over the juvenile protection matter by a tribal court, the district court shall proceed as if the matter was not transferred to tribal court.

(e) **Order Terminating District Court Jurisdiction.** After issuing the order transferring the juvenile protection matter to the Indian child's tribe pursuant to subdivision 6(b), and once the district court judge receives information that the tribe has exercised jurisdiction over the matter

pursuant to paragraph (a), the district court judge shall issue an order terminating jurisdiction over the matter which shall include provisions:

(1) stating the factual basis for the judge's determination that the Indian child's tribe has exercised jurisdiction;

(2) terminating jurisdiction over all parties, the Indian child's parent or Indian custodian, and the Indian child;

(3) terminating the responsible social services agency's legal responsibility for the Indian child's placement when the district court has ordered the child into protective care Minnesota Statutes, section 260C.178;

(4) terminating the responsible social services agency's legal custody of the child when the court has transferred legal custody to the responsible social services agency under Minnesota Statutes, section 260C.201, subdivision 1;

(5) discharging the Commissioner of Human Services as guardian and terminating the order for legal custody to the commissioner when the court has ordered guardianship and legal custody to the commissioner; and

(6) discharging court-appointed attorneys and the guardian ad litem for the child and for the parent, if any.

Rule 31.02. Communication between District Court and Tribal Court Judges

Subd. 1. Child Ward of Tribal Court.

(a) When the child is a ward of tribal court, prior to directing the return of the child to tribal court, pursuant to subdivision 4 the district court judge shall communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of the ward; and

(2) inquire of the tribal court judge about any orders regarding the safe transition of the ward so that such orders can be enforced by the district court pursuant to the full faith and credit provisions of the Indian Child Welfare Act, 25 U.S.C. section 1911(d), and Rule 10 of the General Rules of Practice for the District Courts.

(b) The district court judge may order the responsible social services agency and attorney for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the ward's tribe is timely aware of the district court's order for emergency removal of the ward.

(c) Communication permitted under this rule shall facilitate expeditious return of the ward to the jurisdiction of the Indian child's tribe and consultation regarding the safe transition of the child.

Subd. 2. Child Domiciled or Residing on a Reservation.

(a) When the child resides or is domiciled on a reservation, prior to ordering transfer of the juvenile protection matter to tribal court, the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inform the tribal court judge that the district court has ordered the emergency removal of an Indian child; and

(2) inquire of the tribal court judge about any requirements or conditions that should be put in place regarding the safe transition of the child to the jurisdiction of the child's tribe.

(b) The district court judge may order the responsible social services agency and attorneys for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court or return of the Indian child to the child's parent or Indian custodian.

Subd. 3. Child Not a Ward of Tribal Court, Not a Resident or Domiciliary of the Reservation.

(a) When a child is not a ward of tribal court, or does not reside on or is not domiciled on the reservation, prior to ordering transfer of the juvenile protection matter to tribal court the district court judge shall, pursuant to subdivision 4, communicate with a tribal court judge to:

(1) inquire whether the tribal court will accept the transfer and, if so, order the transfer absent objection by either parent pursuant to Rule 31.01, subd. 4, or a finding of good cause to deny the transfer pursuant to Rule 31.01, subd. 6(b), and proceed pursuant to Rule 31.01, subd. 7; and

(2) inquire of the child's tribe what district court orders should be made regarding the child's safe transition to the jurisdiction of the Indian child's tribe when 25 U.S.C. section 1911(b) applies.

(b) The district court judge may order the responsible social services agency and counsel for the parties to communicate with their respective tribal counterparts or to take any other reasonable steps to ensure that the Indian child's tribe is timely aware of the request to transfer the matter to the tribe.

(c) Communication permitted under this rule shall facilitate timely transfer of the matter to tribal court.

Subd. 4. Method of Communication; Inclusion of Parties; Recording.

(a) **Method of Communication.** Communication between the district court judge and the tribal court judge may be in writing, by telephone, or by electronic means.

(b) **Inclusion of Parties.** The district court judge may allow the parties to participate in the communication with the tribal court judge. Participation may be in any form, including a hearing on-the-record or a telephonic communication.

(c) **Record of Communication.** Except as otherwise provided in paragraph (d), a record shall be made of a communication under this rule. If the parties or any party did not participate in the communication, the court shall promptly inform the parties of the communication and grant access to the record. The record may be a written or on-the-record summary of any telephone or verbal communication or a copy of any electronic communication.

(d) **Administrative Communication.** Communication between courts on administrative matters may occur without informing the parties and a record need not be made.

Rule 31.03. Court Administrator's Duties

Upon receiving an order transferring a juvenile protection matter to tribal court, the court administrator shall file the order and serve it on all parties, participants, the Indian child's parents,

and the Indian child according to the requirements of Rule 9. The court administrator shall forward a certified copy of the complete court file personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the tribal court official, as otherwise directed by the transferor court, or any other means calculated to ensure timely receipt of the file by the tribal court.

2019 Advisory Committee Comment

"Tribe," "Tribal Court," and "Tribal Social Services." Throughout the Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901-1963, the phrases "tribe," "tribal court," and "tribal social services" are used. In an effort to remain consistent with ICWA, Rule 31 mirrors the use of those phrases.

Exclusive Jurisdiction. With respect to exclusive jurisdiction, ICWA provides:

"An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child."

25 U.S.C. section 1911(a). The language in the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, section 260.771, subdivision 1, is nearly identical. For a full discussion of "domicile" under ICWA, see Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

Tribe's Method of Communicating Exercise of Jurisdiction. 31.01, subd. 7(c), provides "[t]he district court may accept and rely on any reasonable form of communication indicating the tribe has exercised jurisdiction over the juvenile protection matter." The information received may be in a written order or letter, a telephone call, a faxed or emailed message, a copy of a hearing notice setting the matter for hearing in tribal court, or any other form of communication between the tribe and the district court judge regarding the tribe's action in regard to the district court order transferring the matter to the Indian child's tribe.

Transfer of Juvenile Protection Matter after Termination of Parental Rights. ICWA does not preclude the transfer of matters to tribal court following termination of parental rights. Rule 31.01, subd. 7(e)(5), recognizes the practice of transferring cases to the tribe after termination of parental rights and requires certain orders when such a transfer is made, inter alia, discharging the Commissioner of Human Services as the guardian for the child.

Transfer to Tribe Other Than Indian Child's Tribe. ICWA provides for the transfer of jurisdiction from State court to the "the Indian child's tribe." 25 U.S.C. section 1911. Rule 31.01, subd. 7(c), recognizes that some Indian tribes are exercising jurisdiction over child custody proceedings by designating other tribes to act on their behalf to receive the transferred case.

"Good Cause" to Deny Transfer. Consistent with ICWA, 25 U.S.C. section 1911(b), Rule 31.01, subd. 3, mandates that transfer to the Indian child's tribe must occur upon motion absent objection by a parent or a finding of "good cause to deny transfer." "Good cause to deny transfer" is not defined in ICWA, but is described in MIFPA, Minnesota Statutes, section 260.771, subdivision 3a, and in the ICWA regulations, 25 C.F.R. section 23.118.

Rule 31.02, subd. 4, regarding communication between courts includes language similar to certain provisions in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minnesota Statutes, section 518D.110. Not all provisions in the "communication between courts" provisions of the UCCJEA are included in this rule because the UCCJEA is not applicable when

the case is governed by ICWA. See Minnesota Statutes, section 518D.104, paragraph (a). The purpose of requiring court-to-court communication is to facilitate expeditious return or transfer by timely and direct contact between judges. Nothing in this rule shall be construed to delay return or transfer of the matter to tribal court. Administrative matters may include schedules, calendars, court records, and similar matters. Communication may include receipt of a tribal court order.

D. Parties and Participants

RULE 32. PARTIES

Rule 32.01. Party Status

Subd. 1. Parties Generally. Parties to a juvenile protection matter shall include:

(a) the child's guardian ad litem;

(b) the child's legal custodian;

(c) in the case of an Indian child, the child's parents, the child's Indian custodian, and the Indian child's tribe through the tribal representative;

(d) the petitioner;

(e) any person who intervenes as a party pursuant to Rule 34;

(f) any person who is joined as a party pursuant to Rule 35; and

(g) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant, Runaway, and Sexually Exploited Child. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 35.

Subd. 3. Termination of Parental Rights Matters and Permanent Placement Matters. In addition to the parties identified in subdivision 1, in any termination of parental rights matter or permanent placement matter the parties shall also include:

(a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;

(b) any person entitled to notice of any adoption proceeding involving the child;

(c) the responsible social services agency when the agency is not the petitioner; and

(d) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 4. Relatives Recommended as Permanent Custodians. Relatives have the right to participate as parties in permanency proceedings where required by Minnesota Statutes, section 260C.163, subdivision 2.

Rule 32.02. Rights of Parties

A party shall have the right to:

(a) notice pursuant to Rule 44 or 53;

(b) legal representation pursuant to Rule 36;

(c) be present at all hearings unless excluded pursuant to Rule 38;

(d) conduct discovery pursuant to Rule 17;

(e) bring motions before the court pursuant to Rule 14;

(f) participate in settlement agreements pursuant to Rule 19;

(g) subpoena witnesses pursuant to Rule 12;

(h) make argument in support of or against the petition;

(i) present evidence;

(j) cross-examine witnesses;

(k) request review of the referee's findings and recommended order pursuant to Rule 7;

(l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;

(m) bring post-trial motions pursuant to Rule 21;

(n) appeal from orders of the court pursuant to Rule 23; and

(o) any other rights as set forth in statute or these rules.

Rule 32.03. Parties' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry, and to specify that each such person has party status. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System.

2019 Advisory Committee Comment

Rule 32 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 21. The amendments are not intended to substantively change the rule's meaning.

Rule 32 delineates the status and rights of parties, and Rule 33 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of these rules is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 34 or may be joined as a party pursuant to Rule 35.

Former Rule 21 had provisions for a party to ask the court to keep the party's name and address confidential if the party was endangered. This issue is now addressed by Rule 8.04, subd. 2(p).

RULE 33. PARTICIPANTS

Rule 33.01. Participant Status

Unless already a party pursuant to Rule 32, or unless otherwise specified, participants to a juvenile protection matter shall include:

(a) the child;

(b) any parent who is not a legal custodian and any alleged, adjudicated, or presumed father;

(c) the responsible social services agency, when the responsible social services agency is not the petitioner;

(d) any guardian ad litem for the child's legal custodian;

(e) grandparents with whom the child has lived within the two years preceding the filing of the petition;

(f) relatives or other persons providing care for the child and other relatives who request notice;

(g) current foster parents, persons proposed as permanent foster care parents, and persons proposed as pre-adoptive parents;

(h) the spouse of the child, if any; and

(i) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 33.02. Rights of Participants

Subd. 1. Generally. Unless a participant intervenes as a party pursuant to Rule 34, or is joined as a party pursuant to Rule 35, the rights of a participant shall be limited to:

(a) notice and the petition pursuant to Rule 44 or 53;

(b) legal representation pursuant to Rule 36;

(c) being present at hearings unless excluded pursuant to Rule 38; and

(d) offering information at the discretion of the court, except as provided in subdivision 2.

Subd. 2. Foster Parents, Pre-Adoptive Parents, and Relatives Providing Care. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the responsible social services agency recommends transfer of permanent legal and physical custody of the child shall have a right to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent, pre-adoptive parent, or relative.

Rule 33.03. Participants' Names and Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry, and to specify that each such person has participant status. It shall be the responsibility of each participant to inform the court administrator of any change of address or e-mail address; Registered Users of the E- Filing System shall also update any change of e-mail address in the E-Filing System.

2019 Advisory Committee Comment

Rule 33 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 22. The amendments are not intended to substantively change the rule's meaning.

Rule 32 delineates the status and rights of parties, and Rule 33 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of these rules is to ensure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 34 or may be joined as a party pursuant to Rule 35.

Former Rule 22 had provisions for a party to ask the court to keep the party's name and address confidential if the party was endangered. This issue is now addressed by Rule 8.04, subd. 2(p).

RULE 34. INTERVENTION

Rule 34.01. Intervention of Right

Subd. 1. Child. A child who is the subject of the juvenile protection matter shall have the right to intervene as a party.

Subd. 2. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two years preceding the filing of the petition.

Subd. 3. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 4. Social Services Agency. The responsible social services agency shall have the right to intervene as a party in a case where the responsible social services agency is not the petitioner.

Rule 34.02. Permissive Intervention

Any person may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Rule 34.03. Procedure

Subd. 1. Intervention of Right. A person with a right to intervene pursuant to Rule 34.01 shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within 10 days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the responsible social services agency is not the petitioner, seeking permissive intervention pursuant to Rule 34.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 14. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within 10 days of the filing of the motion to intervene.

Rule 34.04. Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

2019 Advisory Committee Comment

Rule 34 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 23. The amendments are not intended to substantively change the rule's meaning.

RULE 35. JOINDER

The court, upon its own motion or motion of a party or the county attorney, may join a person or entity as a party if the court finds that joinder is:

(a) necessary for a just and complete resolution of the matter; and

(b) in the best interests of the child.

The moving party shall serve the motion upon all parties, the county attorney, and the person proposed to be joined.

2019 Advisory Committee Comment

Rule 35 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 24. The amendments are not intended to substantively change the rule's meaning.

RULE 36. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 36.01. Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter, including through appeal, if any. This right attaches no later than when the party or participant first appears in court.

Rule 36.02. Appointment of Counsel

Subd. 1. Child. Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes, section 260C.163, subdivision 3. Appointment of counsel for an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(b). The court may sua sponte appoint counsel for the child, or may do so upon the request of any party or participant. Any such appointment of counsel for the child shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 2. Parent, Guardian, Legal Custodian, or Indian Custodian. Appointment of counsel for a parent, guardian, or legal custodian whose child is the subject of a juvenile protection matter shall be pursuant to Minnesota Statutes, section 260C.163, subdivision 3. Appointment of counsel for a parent or Indian custodian of an Indian child who is the subject of a juvenile protection matter shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(b). The appointment of counsel for the parent, legal custodian, or Indian custodian shall occur as soon as practicable after the request is made. For purposes of appeal, appointment of counsel in a juvenile protection matter

shall be made within three days of the request for counsel. When possible, the trial court attorney should be appointed as appellate counsel.

Subd. 3. Reimbursement. Whenever counsel is appointed for a child, parent, guardian, or custodian, the court shall make all inquiries required by Minnesota Statutes, section 260C.331, subdivision 5, into the ability to pay for counsel's services, and may make any orders as authorized by that statute.

Subd. 4. Child's Preference. In any juvenile protection matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings pursuant to Minnesota Statutes, section 260C.163, subdivision 3, paragraph (g), if the child is of suitable age to express a preference.

Rule 36.03. Notice of Right to Representation

Any child, parent, legal custodian, or Indian custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to this rule.

Rule 36.04. Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 36.05. Withdrawal or Discharge of Counsel

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

(a) all district court proceedings in the matter have been completed, including filing and resolution in district court of all post-trial motions under Rules 21 and 22;

(b) the attorney has been discharged by the client in writing or on the record;

(c) the court grants the attorney's motion for withdrawal, which may be ex parte, upon good cause shown; or

(d) the court approves the attorney's written substitution of counsel, which may be ex parte.

2019 Advisory Committee Comment

Rule 36 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 25. The amendments are not intended to substantively change the rule's meaning.

Rule 36.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to court-appointed counsel as described in Rule 36.02. Rule 36.02, subd. 4 reiterates the court's statutory responsibility to inquire into a child's preferences regarding the proceedings when the child is not represented by counsel.

Former Rule 25.03 governed reimbursement for the costs of court-appointed counsel, and has been moved to Rule 36.02, subd. 3 for clarity. Former Rule 25.02, subd. 3 governed appointment of counsel for guardians ad litem, and has been removed because counsel for guardians ad litem are now provided by the Minnesota State Guardian ad Litem Program.

Pursuant to Rule 36.05(a), courts should not discharge counsel until there has been an opportunity to file and resolve post-trial motions. The Minnesota Court of Appeals has held that counsel should not be discharged before proceedings have concluded. See, In re M.L.A., 730 N.W.2d 54, 62 (Minn. Ct. App. 2007).

RULE 37. GUARDIAN AD LITEM

Rule 37.01. Appointment for Child

Subd. 1. Mandatory Appointment Generally Required. Where Minnesota Statutes, section 260C.163, subdivision 5, requires appointment of a guardian ad litem, the court shall appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02. If the court has issued an order appointing a person as a guardian ad litem in a child in need of protection or services matter, the court may, but is not required to, issue an order reappointing the same person in the termination of parental rights or other permanent placement matter. An appointment order is required only if a new person is being appointed as guardian ad litem.

Subd. 2. Discretionary Appointment. Where Minnesota Statutes, section 260C.163, subdivision 5, does not require appointment of a guardian ad litem, the court may appoint a guardian ad litem under the procedures set forth in General Rule of Practice 903.02.

Subd. 3. Timing; Method of Appointment. Appointment of a guardian ad litem shall occur prior to the emergency protective care hearing or the admit-deny hearing, whichever occurs first. The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be subject to General Rules of Practice 901-907.

Subd. 4. Responsibilities; Rights. The guardian ad litem shall carry out the responsibilities set forth in Minnesota Statutes, section 260C.163, subdivision 5, paragraph (b). The guardian ad litem shall have the rights set forth in General Rule of Practice 907.

Subd. 5. Guardian Ad Litem Not Also Counsel for Child. The child's guardian ad litem shall not also serve as the child's counsel.

Subd. 6. Counsel for Child Not Also Counsel for Guardian Ad Litem. The child's counsel shall not also serve as counsel for the guardian ad litem.

Subd. 7. Reimbursement. Whenever a guardian ad litem is appointed for a child, the court may make inquiries authorized by Minnesota Statutes, section 260C.331, subdivision 6, into the ability of the parents to pay for the guardian ad litem's services, and may make any orders as authorized by that statute.

Rule 37.02. Discretionary Appointment for Child's Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or a legal custodian pursuant to General Rule of Practice 903.02, subd. 3. The appointment of a guardian ad litem shall be subject to General Rules of Practice 901-907. Appointment of a guardian ad litem for a parent or legal custodian shall not result in discharge of counsel for the parent or legal custodian.

Rule 37.03. Term of Service of Guardian Ad Litem

Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

(a) when the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter;

(b) when the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter;

(c) when the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve as a party until the adoption decree is entered;

(d) when the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve as a party for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary. The guardian ad litem shall be provided notice of all social services administrative reviews and shall be consulted regarding development of any case plan, out-of-home placement plan, or independent living plan required pursuant to Rule 26.

Rule 37.04. Request for Appointment of Counsel for Child

The guardian ad litem shall request appointment of counsel for a child if the guardian ad litem determines that the appointment is necessary to protect the legal rights or legal interests of the child.

2019 Advisory Committee Comment

Rule 37 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 26. The amendments are not intended to substantively change the rule's meaning.

Rule 37.01 refers to the requirements in Minnesota Statutes, section 260C.163, subdivision 5, which requires the court to appoint a guardian ad litem in many circumstances. Rule 37.01 is also consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) for states to receive federal grants for child protection prevention and treatment services. 42 U.S.C. section 5106a(b)(2)(B)(xiii). The state statutory requirements for appointing a guardian ad litem are broader than the federal CAPTA requirements. Rule 37.01, subd. 5, reflects the statutory prohibition in Minnesota Statutes, section 260C.163, subdivision 3, paragraph (f), against a child's counsel acting as the child's guardian ad litem.

Former Rule 26.05 governed reimbursement for the costs of a court-appointed guardian ad litem, and has been moved to Rule 37.01, subd. 7 for clarity.

RULE 38. ACCESS TO HEARINGS

Rule 38.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 38.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 38.01, any party who is entitled to summons pursuant to Rule 44.02 or 53.02, or any participant who is entitled to notice pursuant to Rule 44.03 or 53.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 38.04.

Rule 38.03. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 38.04. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant shall not prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public.

2019 Advisory Committee Comment

Rule 38 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 27. The amendments are not intended to substantively change the rule's meaning.

Pursuant to Rule 32, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

E. Emergency Protective Care Proceedings

RULE 39. EMERGENCY PROTECTIVE CARE PROCEEDINGS TIMELINE

If a child has been removed from the home of the parent or legal custodian pursuant to Rule 40, the court shall hold an emergency protective care hearing within 72 hours of the child's removal.

RULE 40. EX PARTE EMERGENCY PROTECTIVE CARE ORDER AND NOTICE

Rule 40.01. Ex Parte Order for Emergency Protective Care

Subd. 1. Generally. The court may issue an ex parte order for emergency protective care:

(a) as provided by Minnesota Statutes, section 260C.151, subdivision 6; or

(b) where a warrant for immediate custody of the child is authorized by Minnesota Statutes, section 260C.154.

Rule 40.02. Contents of Order

An ex parte order for emergency protective care shall be signed by a judicial officer, shall include the findings required by statute as listed in Rule 40.01, and shall:

(a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes, section 260C.181, or a shelter care facility designated by the court pending an emergency protective care hearing;

(b) state the name and address of the child, unless such information would endanger the child, or, if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(c) state the age and gender of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(d) state the reasons why the child is being taken into emergency protective care;

(e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;

(f) state the date when issued and the county and court where issued; and

(g) state the date, time, and location of the emergency protective care hearing.

Rule 40.03. Execution of Order

An ex parte order for emergency protective care:

(a) may only be executed by a peace officer authorized by law to execute a warrant;

(b) shall be executed by taking the child into custody;

(c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;

(d) may be executed at any time unless otherwise ordered by the court; and

(e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 40.04. Notice

When an ex parte order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

(a) of the existence of the order for emergency protective care;

(b) of the reasons why the child is being taken into emergency protective care;

(c) of the time and place of the emergency protective care hearing;

(d) of the name, address, and telephone number of the responsible social services agency; and

(e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be given in compliance with Minnesota Statutes, section 260C.175, subdivision 2.

Rule 40.05. Enforcement of Order

An ex parte emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

2019 Advisory Committee Comment

Rule 40 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 28. The amendments are intended to eliminate redundant language and statutory conflicts.

RULE 41. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 41.01. Release from Emergency Protective Care

Subd. 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for 72 hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than 72 hours unless an emergency protective care hearing has commenced and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released within 72 hours except as provided by Minnesota Statutes, section 260C.176, subdivision 2, paragraph (b).

(b) **Discretionary Release.** When a peace officer has taken a child into emergency protective care without a court order, the child may be released at any time prior to the emergency protective care hearing as permitted by Minnesota Statutes, section 260C.176, subdivision 1.

Rule 41.02. Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

(a) place restrictions on the child's travel, associations, or place of abode during the period of the child's release; and

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after 72 hours unless a hearing has commenced pursuant to Rule 42 and the court has ordered continuation of the condition.

Rule 41.03. Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.

Rule 41.04. Reports

Subd. 1. Report by Peace Officer. Any report required by Minnesota Statutes, section 260C.176, subdivision 4, shall be filed with the court on or before the first court day following placement of the child.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes, section 260C.176, subdivision 6, shall be filed with the court on or before the first court day following placement.

2019 Advisory Committee Comment

Rule 41 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 29. The amendments are intended to eliminate redundant language and statutory conflicts.

RULE 42. EMERGENCY PROTECTIVE CARE HEARING

Rule 42.01. Timing

Subd. 1. Generally. The court shall hold an emergency protective care hearing within 72 hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 41. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight days. A continuance may be granted:

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 40; and

(b) upon a finding by the court that a continuance is necessary for:

(1) the protection of the child;

(2) the accumulation or presentation of necessary evidence or witnesses;

(3) to protect the rights of a party; or

(4) other good cause shown.

Rule 42.02. Notice of Hearing

The court administrator, or designee, shall inform the following persons of the time and place of the emergency protective care hearing:

(a) the county attorney;

(b) the responsible social services agency;

(c) the child;

(d) the child's counsel;

(e) the child's guardian ad litem;

(f) the child's parent or legal custodian;

(g) the child's spouse, if any;

(h) the child's Indian custodian;

(i) the child's Indian tribe;

(j) the tribal social services agency as required by Minnesota Statutes, section 260.761, subdivision 2, paragraph (c), and Rule 30.02; and

(k) those persons required by Minnesota Statutes, section 127A.47, subdivision 6.

Rule 42.03. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other documents that any party intends to present at the hearing.

Rule 42.04. Determination Regarding Notice

During the hearing, the court shall determine whether all persons identified in Rule 42.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 42.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each person and whether contact was actually made.

Rule 42.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

(a) the reasons why the child was taken into emergency protective care;

(b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;

(c) the purpose and scope of the hearing;

(d) the possible consequences of the proceedings;

(e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court-appointed counsel pursuant to Rule 36;

(f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and

(g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 42.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted if authorized by Minnesota Statutes, section 626.556, subdivision 8.

Rule 42.07. Filing and Service of Petition

A child in need of protection or services petition or a permanency petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 42.08. Protection Care Determinations

Subd. 1. Initial Determinations

At the emergency protective care hearing, the court shall make the following determinations:

(a) **Prima Facie Showing.** The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) **Endangerment.**

(1) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

(i) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(ii) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(2) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to ensure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

(3) **Continued Custody by Parent Contrary to Welfare of Child.** The court may not order or continue the foster care placement of the child except as permitted by Minnesota Statutes, section 260C.178, subdivision 1, paragraph (f).

(c) **Reasonable or Active Efforts.** Based upon the information provided to the court, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child pursuant to Rule 28.07, subd. 1, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 1(d) exists.

(d) **Placement of Child.** In making a determination of the initial placement of the child, except in cases described in Rule 42.08, subd. 1(e), or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is presumed to be an abandoned infant under Minnesota Statutes, section 260C.301, subdivision 2, at the emergency protective care hearing the court shall require the petitioner to present information regarding the following issues:

(1) whether there are services the court could order that would allow the child to safely return home;

(2) whether responsible relatives of the child, or other responsible adults who are licensed to provide foster care for a child, are available to provide services or to serve as placement options;

(3) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;

(4) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;

(5) whether orders are needed for examinations, evaluations, or immediate services;

(6) the terms and conditions for parental visitation; and

(7) what consideration has been given for financial support of the child.

(e) **Cases Permitting Bypass of Child in Need of Protection or Services Proceedings.**

(1) **Permanency Determination.** Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court at the emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances under Minnesota Statutes, section 260.012, paragraph (a), exists.

(2) **Permanency Hearing Required.** If the court makes a determination under subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency pursuant to Rules 52-59.

Subd. 2. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry as required by Rule 29.01. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child. If the court determines the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Emergency Removal and Placement Authority for Indian Child Ward, Resident, or Domiciliary. In proceedings where an Indian child resides or is domiciled on an Indian reservation, or is a ward of tribal court, the court shall proceed pursuant to Rule 28.07, subd. 2.

Rule 42.09. Protective Care Findings and Order

Within three days of the conclusion of the emergency protective care hearing, the court shall issue a written order which shall include findings pursuant to Rule 42.08 and which shall order:

(a) that the child:

(1) continue in protective care;

(2) return home with conditions to ensure the safety of the child or others;

(3) return home with reasonable conditions of release; or

(4) return home with no conditions;

(b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;

(c) services, if any, to be provided to the child and the child's family;

(d) terms of parental and sibling visitation pending further proceedings;

(e) the parent's responsibility for costs of care pursuant to Minnesota Statutes, section 260C.331, subdivision 1; and

(f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. section 1912(a) and Rule 30.01.

Rule 42.10. Protective Care Review

Subd. 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 44 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternative arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted if authorized by Minnesota Statutes, section 626.556, subdivision 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or

(3) modify the conditions of release.

Rule 42.11. Notification When Child Returned Home

If the parents comply with the conditions of the court order and the child is returned home, including under protective supervision, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home.

2019 Advisory Committee Comment

Rule 42 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 30.

F. Child in Need of Protection or Services Proceedings

RULE 43. CHILD IN NEED OF PROTECTION OR SERVICES PROCEEDINGS TIMELINE

Subd. 1. Admit/Deny Hearing. When a child is removed from home by court order, an admit/deny hearing shall be held within 10 days of the emergency protective care hearing. When a child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three days and no later than 20 days after the filing of the petition. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Scheduling Order. The court shall issue a scheduling order at the admit/deny hearing, or within 15 days of the admit/deny hearing. The scheduling order shall comply with the requirements of Rule 6.

Subd. 3. Pretrial Hearing. The court shall convene a pretrial hearing at least 10 days prior to trial.

Subd. 4. Trial. If the statutory grounds set forth in the petition are denied, a trial regarding a child in need or protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 5. Findings/Adjudication. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if it finds that an extension is required in the interests of justice and in the best interests of the child.

Subd. 6. Disposition. To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that one or more statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as adjudication, the disposition order shall be issued within 10 days of the date the court finds one or more statutory grounds set forth in the petition have been proved.

Subd. 7. Review of Legal Custody. When the disposition is transfer of legal custody, including trial home visits, to the responsible social services agency, the court shall conduct a review hearing at least every 90 days to review whether foster care is necessary and continues to be appropriate or whether the child should be returned to the home of the parent or legal custodian from whom the child was removed. Any party or the county attorney may request a review hearing before 90 days.

Subd. 8. Review of Protective Supervision. When the disposition is protective supervision, the court shall review the disposition in court at least every six months from the date of the disposition.

Subd. 9. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters.

(a) **Reasonable Efforts for Reunification Required.** When a child has been alleged or found to be in need of protection or services and has been ordered into foster care or the home of a noncustodial or nonresident parent, and reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the deadlines for:

(i) the six-month permanency progress review hearing required by Minnesota Statutes, section 260C.204, paragraph (a); and

(ii) the twelve-month hearing to commence permanency proceedings required by Minnesota Statutes, section 260C.503, subdivision 1.

The deadline for the twelve-month hearing shall be calculated pursuant to Minnesota Statutes, section 260C.503, subdivision 3. The court shall notify all parties and participants of these requirements.

(b) **Reasonable Efforts for Reunification Not Required.** When the court finds that the petition states a prima facie case that at least one of the circumstances under Minnesota Statutes, sections 260.012, paragraph (a), 260C.178, paragraph (g), and 260C.503, subdivision 2, paragraph (a) exists and reasonable efforts for reunification are not required, and the county attorney has elected to file a petition under Minnesota Statutes, section 260C.503, subdivision 2, paragraph (d), instead of a petition for termination of parental rights, the court shall order an admit/deny hearing under Rule 55 to be held within 30 days of the prima facie finding, and a trial under Rule 58 to be held within 90 days of the prima facie finding.

2019 Advisory Committee Comment

Rule 43 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 4.03, subds. 1(b)-(i) and 2. The amendment is intended to make it easier for judges, attorneys, and other individuals involved with a child in need of protection or services matter to identify the applicable timelines. Timing provisions that apply to juvenile protection matters in general are located in Rules 4 and 5.

RULE 44. COMMENCEMENT OF PROCEEDINGS

Rule 44.01. Commencement

A child in need of protection or services matter is commenced by filing a petition with the court, or by the filing of a citation pursuant to Rule 45.01, subd. 2.

Rule 44.02. Summons

A summons shall be issued by the court ordering the initial appearance in court of the person(s) to whom it is directed.

Subdivision 1. Upon Whom Served; Method; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 32; the child's parents, except alleged fathers who shall be served a notice pursuant to Rule 44.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Methods of Service:**

(1) **Parents, Parties, and Attorneys.** Unless the court orders service by publication pursuant to Rule 16.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon other parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 44.03.

(2) **Habitual Truant, Runaway, and Sexually Exploited Child Matters.** When the sole allegation is that the child is a habitual truant, a runaway, or a sexually exploited child, initial service may be made as follows:

(i) in lieu of a summons, the court may serve a notice of hearing and a copy of the petition by U.S. mail upon the legal custodian, the person with custody or control of the child, and each party and participant; or

(ii) a peace officer may issue a notice to appear or a citation.

If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

Subd. 2. Content. A summons shall contain or have attached:

(a) a copy of the petition, supporting documents, and ex parte order for emergency protective care, if any; however, these documents shall not be contained in or attached to the summons if the court has authorized service of the summons by publication pursuant to Rule 16.02, subd. 3;

(b) a statement of the time and place for the hearing;

(c) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) a statement that failure to appear may result in:

(1) the child being removed from home pursuant to a child in need of protection or services petition;

(2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(3) permanent transfer of the child's legal and physical custody to a relative;

(4) a finding that the statutory grounds set forth in the petition have been proved; and

(5) an order granting the relief requested; and

(f) a statement pursuant to Rule 18.01 that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) the hearing may result in an order granting the relief requested in the petition.

Subd. 3. Timing of Service of Summons and Petition. The summons and petition shall be served either at or before the emergency protective care hearing, or at least three days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at

the scheduled time if the summons and petition have been served less than three days before the hearing. If service is made outside the state or by publication, the summons shall be served or published at least 10 days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made pursuant to Rule 16.02, subd. 3, one time with the last publication at least 10 days before the date of the hearing.

Subd. 4. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 5. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney proceed against the person for civil contempt of court pursuant to Rule 13 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

Rule 44.03. Notice of Admit/Deny Hearing

A notice shall be issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 1. Upon Whom Served.

If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 32, and a notice of hearing and petition upon all participants identified in Rule 33, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

Subd. 2. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;

(b) a statement of the time and place of the hearing;

(c) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 34;

(f) a statement pursuant to Rule 18.01 that failure to appear may result in:

(1) the child being removed from home pursuant to a child in need of protection or services petition;

(2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(3) permanent transfer of the child's legal and physical custody to a relative;

(4) a finding that the statutory grounds set forth in the petition have been proved; and

(5) an order granting the relief requested; and

(g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 3. Method of Service. If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Rule 44.04. Notice of Subsequent Hearings

(a) **Upon Whom.** For each hearing following the admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, the notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five days before the date of the next hearing or 10 days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

Rule 44.05. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the attendance of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 9.

Rule 44.06. Petitioner's Notice Responsibility Under the Indian Child Welfare Act

The petitioner shall provide all notices as required by the Indian Child Welfare Act and as provided in Rule 30.01.

2019 Advisory Committee Comment

Rule 44 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 32.

Rule 44.04 encourages the best practice of personally serving the notice of hearing by the close of the current hearing. The committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

RULE 45. PETITION

Rule 45.01. Drafting and Filing

Subdivision 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person. A petition shall be served pursuant to Rule 44.02. If the petition contains any confidential information or confidential documents that are inaccessible to the public under Rule

8.04, the petitioner shall file the confidential information or confidential documents in the manner required by Rule 8.04, subd. 5.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer as authorized by Minnesota Statutes, section 260C.143. A citation shall contain:

(a) the name, address, date of birth, and race of the child;

(b) the name and address of the parent or legal custodian of the child;

(c) the offense alleged and a reference to the statute which is the basis for the charge; and

(d) the time and place the alleged offense was committed. If the child is alleged to be a runaway, the place where the offense was committed may be stated as either the child's parent's residence or lawful placement or where the child was found by the officer. If the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Rule 45.02. Content

Subdivision 1. Generally. Every petition filed with the court in a juvenile protection matter, or an affidavit accompanying the petition, shall be verified by a person having knowledge of the facts, and may be verified on information and belief. The petition or accompanying affidavit shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, races, dates of birth, residences, and mailing addresses of the child's parents when known;

(d) the name, residence, and mailing address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and mailing address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and mailing address of the child's spouse, if any;

(f) the statutory grounds upon which the petition is based, together with a recitation of the relevant portions of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 32, as well as a statement designating them as parties;

(i) the names and address of the participants identified in Rule 33, as well as a statement designating them as participants;

(j) if the child is believed to be an Indian child, a statement regarding;

(1) the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian;

(2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;

(3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and

(4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C section 1911(a); and

(k) when appropriate under the circumstances of the case, notice that:

(1) a proceeding to establish a parent and child relationship or to declare the nonexistence of a parent and child relationship may be brought at the same time as the juvenile protection matter; and

(2) parents may apply for parentage establishment and child support services through the county child support agency.

If any information required by this subdivision is unknown at the time of the filing of the petition, as soon as the information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall note the information on the record or shall direct the petitioner to file an amended petition to reflect the updated information.

Subd. 2. Out of State Party. If a party resides out of state, or if there is a likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes, sections 518D.01 to 518D.317.

Subd. 3. Disclosure of Name and Address - Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that information shall be filed pursuant to Rule 8.04, subd. 2(p).

Rule 45.03. Who May File; Court Review

Any reputable person may file a child in need of protection or services petition. If the petition is filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services, then the petition must meet the requirements in Minnesota Statutes, section 260C.141, subdivision 1, paragraph (b), and the court administrator and court must review the petition pursuant to Minnesota Statutes, section 260C.141, subdivision 1, paragraph (b), within three days of filing.

Rule 45.04. Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

2019 Advisory Committee Comment

Rule 45 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 33.

Former Rule 33 had provisions allowing a petitioner to restrict public access to a name or address if disclosure would endanger a person. This issue is now addressed in Rule 8.04.

RULE 46. ADMIT/DENY HEARING

Rule 46.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 47.

Rule 46.02. Timing

Subdivision 1. Child in Placement. When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within 10 days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing pursuant to Rule 42. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than three days and no later than 20 days after the filing of the petition. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition upon the child.

Rule 46.03. Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) pursuant to Rule 29, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in Rule 49.02, subd. 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation;

(h) explain the purpose of the proceeding and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 30.01 and 25 U.S.C section 1912(a);

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 42.08, subd. 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the record inquiry as required by Rule 29.02. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 31.02, subd. 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter;

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. sections 1901-1963, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. section 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies; and

(m) advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent; and

(2) a permanent placement determination hearing must be held within 12 months of the date of the child's placement in foster care or the home of a noncustodial or nonresident parent.

Subd. 2. Initial Determinations. In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the petition, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 42.08. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. If the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Motions. The court shall hear any motion addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

Subd. 4. Scheduling order. The court shall issue a scheduling order pursuant to Rule 6.

2019 Advisory Committee Comment

Rule 46 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 34.

RULE 47. ADMISSION OR DENIAL

Rule 47.01. Generally

Subdivision 1. Parent or Legal Custodian. Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

Subd. 2. Child.

(a) **Generally.** Except as otherwise provided in this rule, the child shall not admit or deny the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition, only the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition. The county attorney has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services.

Rule 47.02. Denial

Subdivision 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Scheduling Order. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 48 or Rule 49, and shall issue a scheduling order pursuant to Rule 6.

Rule 47.03. Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether:

(1) the person admitting acknowledges an understanding of:

(i) the nature of the statutory grounds set forth in the petition;

(ii) if unrepresented, the right to representation pursuant to Rule 36;

(iii) the right to a trial;

(iv) the right to testify; and

(v) the right to subpoena witnesses; and

(2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Sexually Exploited Child Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or a sexually exploited child, the court shall also determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether the person admitting acknowledged an understanding that:

(1) a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or other permanent placement option including termination of parental rights to the child; and

(2) if the child is in out-of-home placement, a permanency progress review hearing will be held within six months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent, and a permanent placement determination hearing will be held within 12 months of the date the child is ordered placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a party may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. An admission may be withdrawn upon filing a motion with the court:

(a) before a finding on the petition, for any fair and just reason; or

(b) at any time, upon a showing that withdrawal is necessary to correct a manifest injustice.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c) the admission has not been accepted.

Subd. 7. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 50 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 48 or Rule 49.

2019 Advisory Committee Comment

Rule 47 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 47 was formerly codified as Rule 35. The amendments to Rule 47 are not intended to substantively change the rule's meaning.

RULE 48. PRETRIAL HEARING

Rule 48.01. Timing

The court shall convene a pretrial hearing at least 10 days prior to trial.

Rule 48.02. Purpose

The purposes of a pretrial hearing shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 36. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) the statutory grounds admitted or denied;

(3) any stipulations to foundation and relevance of documents; and

(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial;

(k) determine the need for, and date for submission of, proposed findings; and

(l) determine any other relevant issues.

Rule 48.03. Pretrial Order

The pretrial order shall be filed within 10 days of the hearing, shall include the information specified in Rule 48.02, and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 48.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the conclusion of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

2019 Advisory Committee Comment

Rule 48 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 48 was formerly codified as Rule 36.

Rule 48.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. Consistent with committee recommendations dating back to 1999, the 2019 Advisory Committee intends that any such motion be heard and resolved at the pretrial conference.

Rule 48.04 is amended to clarify that the continuing obligation to update information continues through the duration of the trial. Before 2019, the rule referred to a continuing obligation to update information provided during the pretrial hearing through the "date of trial." The amended language makes clear that this obligation extends until the trial is concluded.

RULE 49. TRIAL

Rule 49.01. Timing

Subd. 1. Trial. Pursuant to Rule 43, subd. 3, a trial regarding a child in need of protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within 30 days of the order.

Rule 49.02. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in subdivision 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, section 260C.503 to 260C.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the petitioner may make an opening statement confined to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall also be confined to the facts expected to be proved;

(3) the petitioner shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the petitioner may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the petitioner, in order determined by the court, may make a closing statement;

(9) the petitioner may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within 15 days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 49.03. Standard of Proof

Pursuant to Minnesota Statutes, section 260C.163, subdivision 1, paragraph (a), and the Indian Child Welfare Act, 25 U.S.C. section 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

Rule 49.04. Decision

Subd. 1. Timing. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Decision. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule the matter for further proceedings pursuant to Rule 51. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 9.

2019 Advisory Committee Comment

Rule 49 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 49 was formerly codified as Rule 39.

Former Rule 39.01 consisted of a definition of the term "trial." The committee believed it was unnecessary to define the term "trial," and so the former Rule 39.01 was deleted. Rule 49.01, subd. 1(f) is amended to clarify that the "basic trial rights" the court must explain are the rights listed in subd. 2(a) of the rule. The remaining amendments are not intended to substantively change the rule's meaning.

RULE 50. ADJUDICATION

Rule 50.01. Adjudication

If a court makes a finding that the statutory grounds set forth in a petition alleged a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 51; or

(b) withhold adjudication of the child pursuant to Rule 50.02.

Rule 50.02. Withholding Adjudication

Subd. 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed 90 days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 51.

Subd. 2. Further proceedings. At a hearing, which shall be held within 90 days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 51.

2019 Advisory Committee Comment

Rule 50 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 50 was formerly codified as Rule 40.

RULE 51. DISPOSITION

Rule 51.01. Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 50.01, the court shall conduct a hearing to determine disposition and order disposition accordingly as provided in Minnesota Statutes, sections 260C.193 and 260C.201, and any other applicable statutes.

Rule 51.02. Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as the adjudication, the disposition order shall be issued within 10 days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 51.03. Hearings to Review Disposition

When the disposition is an award of legal custody to the responsible social services agency, the court shall review the disposition in court at least every 90 days. Any party or the county attorney may request a review hearing before 90 days. When the disposition is protective supervision, the court shall review the disposition in court at least every six months from the date of disposition.

2019 Advisory Committee Comment

Rule 51 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 51 was formerly codified as Rule 41. The committee recommended reducing the rule to the provisions that address the timing of disposition hearings. The committee believes the rest of former Rule 41 was unnecessary, because it restated provisions of the Juvenile Court Act.

G. Permanency or Termination of Parental Rights Proceedings

RULE 52. PERMANENCY OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS TIMELINE

Rule 52.01. Petitioner Timelines

Subd. 1. Permanency or Termination of Parental Rights − Generally. Pursuant to Minnesota Statutes, section 260C.505, a permanency or termination of parental rights petition must be filed at or prior to the time the child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months. A party other than the responsible social services agency may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date required by Minnesota Statutes, section 260C.515, subdivision 4, clause (6).

Subd. 2. Permanency or Termination of Parental Rights − Expedited Manner. If the expedited petition provisions of Minnesota Statutes, section 260C.503, subdivision 2, apply, the county attorney shall file the permanency or termination of parental rights petition in a manner that permits the court to complete service at least 10 days before the admit/deny hearing scheduled pursuant to Rule 52.02, subd. 2.

Rule 52.02. Court Timelines

Subd. 1. Admit/Deny Hearing. An admit/deny hearing shall be held not less than 10 days after service of the summons and petition upon the parties. In a permanency or termination of parental rights matter ordered under Rule 43, subd. 9(b), the admit/deny hearing shall be held within 10 days of the filing of the petition. Additionally, the admit/deny hearing shall be held within the timelines required by Minnesota Statutes, section 260C.507. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subd. 3, are met.

Subd. 2. Scheduling Order. The court shall issue a scheduling order at the admit/deny hearing, or within 15 days of the admit/deny hearing. The scheduling order shall comply with the requirements of Rule 6.

Subd. 3. Pretrial Hearing. The court shall convene a pretrial hearing at least 10 days prior to trial.

Subd. 4. Trial. If the statutory grounds set forth in the petition are denied, a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing. A trial required by Minnesota Statutes, section 260C.204, paragraph (d), clauses (2) and (3), following a permanency progress review hearing shall be commenced within 60 days of the filing of the petition required by that statute. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 5. Findings/Adjudication. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more of the statutory grounds set forth in the petition have or have not been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 6. Disposition. To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that one or more statutory grounds set forth in the petition have been proved. In the event disposition is not ordered at the same time as adjudication, the disposition order shall be issued within 10 days of the date the court finds one or more statutory grounds set forth in the petition have been proved.

2019 Advisory Committee Comment

Rule 52 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 4.03, subd. 3, Rule 33.05, subd. 2, Rule 41, and Rule 42.01, subd. 6. The amendment is intended to make it easier for judges, attorneys, and other individuals involved with a permanency or termination of parental rights matter to identify the applicable timelines. Timing provisions that apply to juvenile protection matters in general are located in Rules 4 and 5.

RULE 53. COMMENCEMENT OF PROCEEDINGS – PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 53.01. Commencement

A permanency or termination of parental rights matter is commenced by filing a petition with the court. If a child in need of protection or services file exists, the permanency or termination of parental rights petition shall be filed in a separate file.

53.02. Summons

A summons shall be issued by the court ordering the initial appearance in court of the person(s) to whom it is directed.

Subd. 1. Upon Whom Served; Method; Cost.

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 32; the child's parents, except alleged fathers who shall be served a notice pursuant to Rule 44.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. Additionally, the court shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's parent or legal guardian, and any attorney representing a party in an ongoing child in need of protection or services matter involving the subject child. A summons shall not be served upon a putative father, as defined in Minnesota Statutes, section 259.21, subdivision 12, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minnesota Statutes, section 259.52, unless that individual also meets the requirements of Minnesota Statutes, section 257.55, or is required to be given notice under Minnesota Statutes, section 259.49, subdivision 1. The cost of service of a summons and petition filed by someone other than a non-profit or public agency shall be paid by the petitioner.

(b) **Methods of Service.** Unless the court orders service by publication pursuant to Rule 16.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon other parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 44.03.

Subd. 2. Content. A summons shall contain or have attached:

(a) a copy of the petition, supporting documents, and ex parte order for emergency protective care, if any; however, these documents shall not be contained in or attached to the summons if the court has authorized service of the summons by publication pursuant to Rule 44.02, subd. 3(a);

(b) a statement of the time and place for the hearing;

(c) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) for a permanency matter other than a termination of parental rights matter, a statement that failure to appear may result in:

(1) permanent out-of-home placement of the child pursuant to a permanency petition;

(2) permanent transfer of the child's legal and physical custody to a relative;

(3) a finding that the statutory grounds set forth in the petition have been proved; and

(4) an order granting the relief requested;

(f) for a termination of parental rights matter, a statement that failure to appear may result in:

(1) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(2) permanent transfer of the child's legal and physical custody to a relative;

(3) a finding that the statutory grounds set forth in the petition have been proved; and

(4) an order granting the relief requested; and

(g) a statement pursuant to Rule 18.01that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) the hearing may result in termination of the person's parental rights.

Subd. 3. Timing of Service of Summons and Petition. In any permanency or termination of parental rights matter, the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least 10 days prior to the date set for the admit/deny hearing. In cases where publication of a summons is ordered, published notice shall be made pursuant to Rule 16.02, subd. 3 at least once per week for three weeks with the last publication at least 10 days before the date of the hearing. Notice sent by certified mail to the last known address shall be mailed at least 20 days before the date of the hearing.

Subd. 4. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court. Pursuant to Minnesota Statutes, section 260C.307, subdivision 3, in a termination of parental rights matter a waiver by a parent who is a minor or is incompetent is only effective if the parent's guardian ad litem concurs in writing.

Subd. 5. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney proceed against the person for civil contempt of court pursuant to Rule 13 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

Rule 53.03. Notice of Admit/Deny Hearing

A notice shall be issued by the court notifying the person(s) to whom it is addressed of the specific time and place of a hearing.

Subd. 1. Upon Whom Served.

The court administrator shall serve a summons and petition upon all parties identified in Rule 32, and a notice of hearing and petition upon all participants identified in Rule 33, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian. In a permanency matter other than a termination of parental rights matter, the court administrator shall serve a notice of hearing upon relatives if required by Minnesota Statutes, section 260C.204, paragraph (b). In a termination of parental rights matter, the court administrator shall serve a notice of hearing on the child's grandparents if required by Minnesota Statutes, section 260C.307, subdivision 3.

Subd. 2. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;

(b) a statement of the time and place of the hearing;

(c) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 34;

(f) for a permanency matter other than a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:

(1) permanent out-of-home placement of the child pursuant to a permanency petition;

(2) permanent transfer of the child's legal and physical custody to a relative;

(3) a finding that the statutory grounds set forth in the petition have been proved; and

(4) an order granting the relief requested;

(g) for a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:

(1) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(2) permanent transfer of the child's legal and physical custody to a relative;

(3) a finding that the statutory grounds set forth in the petition have been proved; and

(4) an order granting the relief requested; and

(h) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 3. Method of Service.

If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Rule 53.04. Notice of Subsequent Hearings

(a) **Upon Whom.** For each hearing following the admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, the notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five days before the date of the next hearing or 10 days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail, or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

Rule 53.05. Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the attendance of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 9.

Rule 53.06. Petitioner's Notice Responsibility Under the Indian Child Welfare Act

The petitioner shall provide all notices as required by the Indian Child Welfare Act and as provided in Rule 30.01.

2019 Advisory Committee Comment

Rule 53 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 44 for permanency and termination of parental rights matters.

Rule 53.04 encourages the best practice of personally serving the notice of hearing by the close of the current hearing. The committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

RULE 54. PETITION - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 54.01. Drafting and Filing: Title

Subd. 1. Generally. A petition may be drafted and filed by any person listed in Rule 54.03. A petition shall be served pursuant to Rule 53.02. If the petition contains any confidential information or confidential documents that are inaccessible to the public under Rule 8.04, the petitioner shall file the confidential information or confidential documents in the manner required by Rule 8.04, subdivision 5.

Subd. 2. Title. Every petition in a permanent placement matter, or an affidavit accompanying the petition, shall contain a title denoting the relief sought:

(a) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall name a fit and willing relative as a proposed permanent legal and physical custodian.

(b) A request for permanent custody to the agency shall be entitled "Juvenile Protection Petition for Permanent Custody to the Agency."

(c) A request for temporary legal custody to the agency for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Temporary Legal Custody to the Agency."

(d) A termination of parental rights petition shall be entitled "Petition to Terminate Parental Rights."

Rule 54.02. Content

Subd. 1. Generally. Every petition filed with the court in a permanency or termination of parental rights matter, or an affidavit accompanying the petition, shall be verified by a person having knowledge of the facts, and may be verified on information and belief. The petition or accompanying affidavit shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(c) the names, races, dates of birth, residences, and mailing addresses of the child's parents when known;

(d) the name, residence, and mailing address of the child's legal custodian, the person having custody or control of the child, the nearest known relative if no parent or legal custodian can be found, and, if the child is believed to be an Indian child, the name and mailing address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and mailing address of the child's spouse, if any;

(f) the statutory grounds upon which the petition is based, together with a recitation of the relevant portions of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act;

(h) the names and addresses of the parties identified in Rule 32, as well as a statement designating them as parties;

(i) the names and address of the participants identified in Rule 33, as well as a statement designating them as participants; and

(j) if the child is believed to be an Indian child, a statement regarding;

(1) the specific actions that have been taken to prevent the child's removal from, and to safely return the child to, the custody of the parents or Indian custodian;

(2) whether the residence of the child is believed to be on an Indian reservation and, if so, the name of the reservation;

(3) whether the child is a ward of a tribal court and, if so, the name of the tribe; and

(4) whether the child's tribe has exclusive jurisdiction pursuant to 25 U.S.C. section 1911(a).

If any information required by this subdivision is unknown at the time of the filing of the petition, as soon as the information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall note the information on the record or shall direct the petitioner to file an amended petition to reflect the updated information.

Subd. 2. Out of State Party. If a party resides out of state, or if there is a likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes, sections 518D.01 to 518D.317.

Subd. 3. Disclosure of Name and Address - Endangerment. If there is reason to believe that an individual may be endangered by disclosure of a name or address required to be provided pursuant to this rule, that information shall be filed pursuant to Rule 8.04, subdivision 2(p).

Rule 54.03. Who May File; Court Review

Subd. 1. Permanent Placement Positions. The county attorney may file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney or

an agent of the Commissioner of Human Services may seek any alternative permanent placement relief, and any other party may seek only termination of parental rights or transfer of permanent legal and physical custody to a relative. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by the other parties. A petition seeking alternative permanent placement relief shall identify which proposed permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option is sought for each child and why that option is in the best interest of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 2. Termination of Parental Rights Petitions. Any person authorized by Minnesota Statutes, section 260C.307, subdivision 1 may file a petition for termination of parental rights. If the petition is filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services, then the petition must meet the requirements in Minnesota Statutes, section 260C.141, subdivision 1, paragraph (b), and the court administrator must review the petition pursuant to Minnesota Statutes, section 260C.141, subdivision 1, paragraph (b).

Rule 54.04. Amendment

Subd. 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial. The petitioner shall provide written or on-the-record notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

2019 Advisory Committee Comment

Rule 54 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 45 for permanency and termination of parental rights matters.

The pre-2019 rules had provisions allowing a petitioner to restrict public access to a name or address if disclosure would endanger a person. This issue is now addressed in Rule 8.04.

RULE 55. ADMIT/DENY HEARING - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 55.01. Generally

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 56.

Rule 55.02. Timing

An admit/deny hearing shall be held not less than 10 days after service of the summons and petition upon the parties. In a permanency or termination of parental rights matter ordered under Rule 43, subdivision 9(b), the admit/deny hearing shall be held within 10 days of the filing of the petition. Additionally, the admit/deny hearing shall be held within the timelines required by Minnesota Statutes, section 260C.507. In matters governed by the Indian Child Welfare Act, an admit/deny hearing shall not be held until the provisions of Rule 30.01, subdivision 3, are met.

Rule 55.03. Hearing Procedure

Subd. 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) pursuant to Rule 29, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights as listed in Rule 58.02, subdivision 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation;

(h) explain the purpose of the proceeding and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 30.01 and 25 U.S.C. section 1912(a);

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 42.08, subdivision 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the record inquiry as required by Rule 29.02. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 31.02, subdivision 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter;

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. sections 1901−1963, based on the information received from the tribe or tribes required to receive notice pursuant to 25 U.S.C. section 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies; and

(m) in a permanency matter other than a termination of parental rights matter, advise all persons present that at the conclusion of the permanency proceedings, the court will:

(1) order the child returned to the care of the parent or guardian from whom the child was removed; or

(2) if it is in the child's best interests, order a permanency disposition or a termination of parental rights; or

(n) in a termination of parental rights matter, advise all persons present that:

(1) if the court determines that the child is in need of protection or services, the court will either enter or withhold adjudication pursuant to Rule 50 and schedule further proceedings pursuant to Rule 51; and

(2) if the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights.

Subd. 2. Initial Determinations. (a) After completing the initial inquiries set out in Rule 55.03, subdivision 1, the court shall review the facts set forth in the petition, consider any arguments made by the parties, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the child is an Indian child, the court shall apply Rules 28−31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall make a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may make a finding that reasonable efforts to reunify the child and the parent or legal custodian were not required under Minnesota Statutes, section 260.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 56. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(i) return the child to the care of the parent or legal custodian;

(ii) give the petitioner 10 days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii) give the petitioner 10 days to file a child in need of protection or services petition; or

(iv) dismiss the petition.

2019 Advisory Committee Comment

Rule 55 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 46 for permanency and termination of parental rights matters.

RULE 56. ADMISSION OR DENIAL - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 56.01. Generally

Subd. 1. Permanent Placement Matters. In a permanent placement matter other than a termination of parental rights matter, only the legal custodian of the child who is not a petitioner is required to admit or deny the petition. Any party has the right to object to an admission or to contest the basis of a petition.

Subd. 2. Transfer of Permanent Legal and Physical Custody to a Relative. When there is a petition for transfer of permanent legal and physical custody to a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(a) the legal consequences of a transfer of permanent legal and physical custody;

(b) the nature and amount of financial support and services that will be available to help care for the child;

(c) how the custody order can be modified; and

(d) any other permanent placement options available for the subject child.

Subd. 3. Termination of Parental Rights Matters. In a termination of parental rights matter, only parents of the child are required to admit or deny the petition. Any party has the right to object to an admission or to contest the basis of a petition. The county attorney has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services.

Rule 56.02. Denial

Subd. 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd. 2. Scheduling Order. When a denial by any party is entered, the court shall schedule further proceedings pursuant to Rule 57 or Rule 58, and shall issue a scheduling order. The scheduling order shall establish deadlines for:

(a) completion of discovery and other pretrial preparation;

(b) serving, filing, or hearing motions;

(c) submission of the proposed case plan;

(d) the pretrial conference;

(e) the trial;

(f) the disposition hearing;

(g) the permanency placement determination hearing; and

(h) any other events deemed necessary or appropriate.

The scheduling order shall comply with the requirements of Rule 6.

Rule 56.03. Admission

Subd. 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel. In a termination of parental rights matter, a written admission by a parent who is a minor or incompetent shall be effective only if the parent's guardian ad litem concurs in writing.

Subd. 3. Questioning of Person Making Admission. Before accepting an admission the court shall determine on the record or by a written document signed by the person admitting and the person's counsel, if represented, whether:

(a) the person admitting acknowledges an understanding of:

(1) the nature of the statutory grounds set forth in the petition;

(2) if unrepresented, the right to representation pursuant to Rule 36;

(3) the right to a trial;

(4) the right to testify; and

(5) the right to subpoena witnesses; and

(b) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 19 settlement agreement, a party may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. Withdrawal of Admission. An admission may be withdrawn upon filing a motion with the court:

(a) before a finding on the petition, for any fair and just reason; or

(b) at any time, upon a showing that withdrawal is necessary to correct a manifest injustice.

Subd. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19; or

(c) the admission has not been accepted.

Subd. 7. Further Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 19, the court shall enter an order with respect to adjudication pursuant to Rule 50 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 57 or Rule 58.

2019 Advisory Committee Comment

Rule 56 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 47 for permanency and termination of parental rights matters.

Rule 56.03, subdivision 2, provides that the court may only accept a written admission in a termination of parental rights matter from a parent who is a minor or incompetent if the parent's guardian ad litem concurs in writing. This is to be consistent with Minnesota Statutes, section

260C.307, subdivisions 3 and 4, which generally require written agreement by a guardian ad litem when a parent who is a minor or incompetent consents to termination of parental rights.

RULE 57. PRETRIAL HEARING - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 57.01. Timing

The court shall convene a pretrial hearing at least 10 days prior to trial.

Rule 57.02. Purpose

The purposes of a pretrial hearing shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 36. If counsel is appointed at the pretrial hearing, the hearing shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) the statutory grounds admitted or denied;

(3) any stipulations to foundation and relevance of documents; and

(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial;

(k) determine the need for, and date for submission of, proposed findings; and

(l) determine any other relevant issues.

Rule 57.03. Pretrial Order

The pretrial order shall be filed within 10 days of the hearing, shall include the information specified in Rule 57.02, and shall specify all factual allegations and statutory grounds admitted and denied.

Rule 57.04. Continuing Obligation to Update Information

From the date of the pretrial hearing through the conclusion of the trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.

2019 Advisory Committee Comment

Rule 57 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 48 for permanency and termination of parental rights matters.

Rule 57.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child's testimony can only be made after notice of motion and a hearing. Consistent with committee recommendations dating back to 1999, the 2019 Advisory Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 58. TRIAL - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS

Rule 58.01. Timing

Subd. 1. Trial. Pursuant to Rule 52.02, subd. 4, a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing. A trial required by Minnesota Statutes, section 260C.204, paragraph (d), clauses (2) and (3) following a permanency progress review hearing shall be commenced within 60 days of the filing of the petition required by that statute. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within 30 days of the order.

Rule 58.02. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) pursuant to Rule 29.02, inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights as listed in subd. 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the petitioner may make an opening statement confined to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall also be confined to the facts expected to be proved;

(3) the petitioner shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the petitioner may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the petitioner, in order determined by the court, may make a closing statement;

(9) the petitioner may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within 15 days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 58.03. Standard of Proof

Subd. 1. Permanency Matter. In a permanency matter other than a termination of parental rights matter, the standard of proof is clear and convincing evidence.

Subd. 2. Termination of Parental Rights Matter.

(a) **Non-Indian Child.** Pursuant to Minnesota Statutes, section 260C.317, subdivision 1, in a termination of parental rights matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(f), and Rule 28.04, in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

Rule 58.04. Decision

(a) **Timing.** Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

(b) **Decision - Permanency Matter.** Pursuant to Minnesota Statutes, section 260C.509, after a permanency trial the court shall order the child returned to the care of the parent or guardian from whom the child was removed; or, if it is in the child's best interests, order a permanency disposition or a termination of parental rights. The court shall issue a decision consistent with Minnesota Statutes, sections 260C.511 to 260C.513, and shall include in its order the findings required by Minnesota Statutes, section 260C.517. The court shall order further hearings if required by Minnesota Statutes, section 260C.519, and shall conduct any further review as required by Minnesota Statutes, section 260C.521.

(c) **Decision - Termination of Parental Rights Matter.**

(1) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule further proceedings pursuant to Rule 51. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights.

(2) **Particularized Findings - Non-Indian Child.** In addition to making the findings required in paragraph (c)(1), the court shall also make findings as follows:

(i) In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided by Minnesota Statutes, section 260.012, paragraph (a).

(ii) Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

1. the child's interests in preserving the parent-child relationship;

2. the parent's interests in preserving the parent-child relationship; and

3. any competing interests of the child.

(iii) As provided in Minnesota Statutes, section 260C.301, subdivision 7, the interests of the child are paramount.

(3) **Particularized Findings - Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings as provided in Rule 28.07, subd. 4. The best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. sections 1901-1963.

2019 Advisory Committee Comment

Rule 58 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 49 for permanency and termination of parental rights matters.

Rule 58.03 addresses the standards of proof for permanency and termination of parental rights matters. For an Indian child in a permanency proceeding, under Rule 28.04, subd. 3 and the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1912(e), the standard of proof is clear and convincing evidence. The same standard of proof applies to a non-Indian child in a permanency proceeding. In re D.L.D., 865 N.W.2d 315, 322 (Minn. Ct. App. 2015) (relying on an earlier version of the Rules of Juvenile Protection Procedure to determine the standard of proof.) For an Indian child in a termination of parental rights matter, under Rule 28.04, subd. 3 and ICWA, 25 U.S.C. section 1912(f), the standard of proof is beyond a reasonable doubt. For a non-Indian child in a termination of parental rights matter, the standard of proof is clear and convincing evidence under the Juvenile Court Act, Minnesota Statutes, section 260C.317, subdivision 1.

RULE 59. REESTABLISHMENT OF LEGAL PARENT AND CHILD RELATIONSHIP

A petition for reestablishment of the legal parent and child relationship may be filed by the county attorney, or parent whose parental rights were terminated, under the Family Reunification Act of 2013, Minnesota Statutes, section 260C.329. The petition shall be reviewed by the court, and the resulting order processed by court administration, as provided in Minnesota Statutes, section 260C.329.

2019 Advisory Committee Comment

Rule 59 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

H. Voluntary Placement Proceedings

RULE 60. REVIEW OF CHILDREN IN VOLUNTARY FOSTER CARE FOR TREATMENT

Rule 60.01. Generally

Subd. 1. Scope of Rule. This rule governs review of all voluntary foster care for treatment placements made pursuant to Minnesota Statutes, section 260D.01.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260D.01, upon the filing of a report by the responsible social services agency or licensed child-placing agency pursuant to Minnesota Statutes, section 260D.06.

Subd. 3. Court File Required. Upon the filing of a report under this rule, the court administrator shall open a voluntary foster care for treatment file.

Rule 60.02. Report by Agency

The agency shall file a report with the contents and within the timeline required by Minnesota Statutes, section 260D.06.

Rule 60.03. Court Review and Determinations Based on Court Report

Upon the filing of a report under Rule 60.02, the court shall review the report and make determinations within ten days of filing, as required by Minnesota Statutes, section 260D.06. The court administrator shall serve copies of the order, and notices of required permanency review, as required by Minnesota Statutes, section 260D.06, subdivision 2, paragraphs (h) to (i), and additionally upon an Indian child's tribe. Any hearing required by Minnesota Statutes, section 260D.06, subdivision 2, paragraph (j), shall be held within 10 days of the court's determinations.

Rule 60.04 Court Review of Agency Determination Under Section 260D.07

If judicial approval is required of an agency's determination that there are compelling reasons to continue a child in a voluntary foster care arrangement, the agency shall file a "Petition for Permanency Review Regarding a Child in Voluntary Foster Care for Treatment" as provided in Minnesota Statutes, section 260D.07. The petition shall be drafted, filed, processed, and reviewed as provided in Minnesota Statutes, section 260D.07, except:

(a) the petition shall be under oath or under penalty of perjury pursuant to Minnesota Statutes, section 358.116; and

(b) the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon the persons listed in Minnesota Statutes, section 260D.07, paragraph (e).

The court shall give the notice of continued review requirements, and conduct annual review, as provided in Minnesota Statutes, section 260D.08.

Rule 60.05. Review of Voluntary Foster Care After Adjudication Under Chapter 260C

When an agency and a parent agree to enter into a voluntary foster care arrangement under Minnesota Statutes, section 260D.09, the agency shall file the motion and petition required under Minnesota Statutes, section 260D.09, paragraph (b). The petition shall be drafted, filed, processed, and reviewed as provided in Minnesota Statutes, section 260D.09, except:

(a) the petition shall be under oath or under penalty of perjury pursuant to Minnesota Statutes, section 358.116; and

(b) the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail, or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon the persons listed in Minnesota Statutes, section 260D.07, paragraph (e).

2019 Advisory Committee Comment

Rule 60 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure, and was formerly codified as Rule 43. The amendments remove language that duplicates statutory provisions. Instead, the amended rule cites the applicable statutes.

Rule 61. REVIEW OF VOLUNTARY PLACEMENT MATTERS

Rule 61.01. Generally

Subd. 1. Scope of Rule. This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes, section 260C.227.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260C.227, upon the filing of a petition by the agency responsible for the child's placement in foster care.

Subd. 3. Court File Required. Upon the filing of a petition under this rule, the court administrator shall open a juvenile protection file. If a child in need of protection or services file regarding the child already exists, the petition shall be filed in that file.

Rule 61.02. Review of Petition

The agency shall file a petition if required by Minnesota Statutes, section 260C.227. If the agency files a petition, the court shall review it as provided in Minnesota Statutes, section 260C.227.

2019 Advisory Committee Comment

Rule 61 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure, and was formerly codified as Rule 44. The amendments remove language that duplicates statutory provisions. Instead, the amended rule cites the applicable statutes.

RULE 62. VOLUNTARY FOSTER CARE FOR CHILDREN OVER 18

Any motions required by Minnesota Statutes, section 260C.229, paragraph (b), shall be filed in the juvenile protection matter where the court previously had jurisdiction over the child. As required by Minnesota Statutes, section 260C.229, paragraph (c), the court shall conduct a hearing within 30 days of the filing of the motion, and shall conduct any review hearings required by the statute.

2019 Advisory Committee Comment

Rule 62 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure.

Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Revisor's Note: The Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings is repealed and its provisions as amended by Supreme Court Order C2-95-1476, dated December 26, 2001, are incorporated into Rule 8 (formerly Rule 44) of the Rules of Juvenile Protection Procedure.

Minnesota Rules of Adoption Procedure

Rules effective January 1, 2005
With amendments effective January 1, 2022

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TEXT OF RULES

Rule 1. Scope and Purpose

1.01 Scope

These rules govern the procedure in the juvenile courts of Minnesota for all adoptions pursuant to Minnesota Statutes, sections 259.20 to 259.89, and adoptions of children under the guardianship of the commissioner of human services pursuant to Minnesota Statutes, sections 260C.601 to 260C.637. These rules do not apply to a change of name under Minnesota Statutes, sections 259.10 to 259.13. Rules 39, 42, 43, and 44 regarding contested adoptions do not apply to children under the guardianship of the commissioner of human services.

(Amended effective July 1, 2014.)

1.02 Purpose

These rules establish uniform practice and procedure for adoption matters in the juvenile courts of Minnesota. The purpose of these rules is to ensure that:

(a) the best interests of adopted persons are met in the planning and granting of an adoption, including, in the adoption of a child, an individualized determination of the child's needs and how the adoptive placement will serve the child's needs;

(b) there is recognition of the diversity of Minnesota's population and the diverse needs of persons affected by adoption; and

(c) the processes are culturally responsive.

(Amended effective July 1, 2014.)

2004 Advisory Committee Comment

Rule 1.02 reflects the policy set forth in Minnesota Statutes, sections 259.20 and 259.29. The purpose statement also reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, 42 U.S.C., sections 601, 603, 622, 629, 653, 675, 670-679, and 1320, which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, stable, permanent home for the child.

Rule 2. Definitions

2.01 Definitions

The terms used in these rules shall have the following meanings:

(1) **"Adjudicated father"** means an individual determined by a court, or pursuant to a Recognition of Parentage under Minnesota Statutes, section 257.75, to be the biological father of the child.

(2) **"Adoption case records"** means all records regarding a particular adoption matter filed with or generated by the court, including orders, notices, the register of actions, the index, the calendar, and the official transcript. See also "records" defined in subdivision (30).

(3) **"Adult adoption"** means the adoption of a person at least 18 years of age.

(4) **"Adoption matter"** means any proceeding for adoption of a child or an adult in the juvenile courts of Minnesota, including a stepparent adoption, relative adoption, direct placement adoption, intercountry adoption, adoption resulting from a juvenile protection matter, proceeding under Minnesota Statutes, sections 260C.601 to 260C.637, and any other type of adoption proceeding.

(5) **"Adoption placement agreement"** has the meaning given under Minnesota Statutes, section 260C.603, subdivision 3.

(6) **"Adoptive placement"** has the meaning given under Minnesota Statutes, section 260C.603, subdivision 5.

(7) **"Affidavit"** is as defined in rule 15 of the General Rules of Practice for the District Courts.

(8) **"Agency,"** as defined in Minnesota Statutes, section 259.21, subdivision 6, and as referenced in Minnesota Statutes, sections 245A.02 to 245A.16 and 260C.007, subdivision 2, means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association, or society licensed or certified by the Commissioner of Human Services to place children for adoption, including a Minnesota federally recognized tribe.

(9) **"Birth relative,"** for purposes of entering into a communication or contact agreement pursuant to Rule 34.01, subdivision 2, means a parent, stepparent, grandparent, brother, sister, uncle, or aunt of a child. This relationship may be by blood, adoption, or marriage. "Birth relative" of an Indian child includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, also includes any person age eighteen (18) or older who is the Indian child's niece, nephew, first or second cousin, brother-in-law, or sister-in-law as provided in the Indian Child Welfare Act, 25 U.S.C. section 1903(2).

(10) **"Child"** means a person under the age of eighteen (18) years.

(11) **"Child placing agency"** means a private agency making or supervising an adoptive placement.

(12) **"Commissioner"** means the Commissioner of Human Services of the State of Minnesota or any employee of the Department of Human Services to whom the commissioner has delegated authority regarding children under the commissioner's guardianship.

(13) **"Contested adoption"** means an adoption matter where:

(a) there are two or more adoption petitions regarding the same child;

(b) a party has filed a written challenge to the adoption; or

(c) a legal custodian or legal guardian who is not a parent has withheld consent.

(14) **"Contested adoptive placement"** applies to children under the guardianship of the Commissioner of Human Services and means that portion of procedures under Minnesota Statutes, section 260C.607, subdivision 6, which provides for motion and hearing to contest the adoptive placement of a child under guardianship of the Commissioner of Human Services.

(15) **"Direct placement adoption"** means the placement of a child by a biological parent or legal guardian, other than an agency, under the procedure for adoption authorized by Minnesota Statutes, section 259.47.

(16) **"Electronic means"** is as defined in Rule 14.01(a)(7) of the General Rules of Practice for the District Courts.

(17) **"Father."** See "adjudicated father" and "putative father" as defined in this rule.

(18) **"Indian child,"** is defined in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 8.

(19) **"Indian custodian,"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903, at 25 C.F.R. section 23.2, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 10.

(20) **"Indian tribe,"** is defined in the Indian Child Welfare Act, 25 U.S.C. section 1903, at 25 C.F.R. section 23.2, and in the Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.755, subdivision 12.

(21) **"Individual related to child,"** as defined under Minnesota Statutes, section 245A.02, subdivision 13, means a spouse, a parent, a biological or adopted child or stepchild, a stepparent, a stepbrother, a stepsister, a niece, a nephew, an adoptive parent, a grandparent, a sibling, an aunt, an uncle, or a legal guardian. Distinguish "relative" under Rule 2.01(31).

(22) **"Legal custodian"** means a person, including a legal guardian, who by court order or statute has sole or joint legal custody of the child.

(23) **"Legal guardian"** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes, section 260C.325, subdivisions 1 and 3, or Minnesota Statutes, chapter 525, or an equivalent law in another jurisdiction.

(24) **"Local social services agency"** means the agency in the county of the petitioner's residence.

(25) **"Parent"** is defined in Minnesota Statutes, section 260C.007, subdivision 25.

(26) **"Petitioner"** means a person, with a spouse, if any, petitioning for the adoption of any person pursuant to Minnesota Statutes, sections 259.20 to 259.89. "Petitioner" also means the responsible social services agency petitioning for the adopting parent to adopt a child under state guardianship pursuant to Minnesota Statutes, section 260C.623.

(27) **"Placement"** means the transfer of physical custody of a child from a biological parent, legal guardian, or agency with placement authority to a prospective adoptive home.

(28) **"Placement activities"** means any of the following:

(a) placement of a child;

(b) arranging or providing short-term foster care pending an adoptive placement;

(c) facilitating placement by maintaining a list in any form of biological parents or prospective adoptive parents;

(d) completing or updating a child's social and medical history as required under Minnesota Statutes, sections 259.41 and 260C.611;

(e) conducting an adoption study;

(f) witnessing consents to an adoption; or

(g) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the Interstate Compact on the Placement of Children, Minnesota Statutes, section 260.851.

(29) **"Putative father"** means a man, including a male who is less than eighteen (18) years of age, who may be a child's father, but who:

(a) is not married to the child's mother on or before the date that the child was or is to be born; and

(b) has not established paternity of the child according to Minnesota Statutes, section 257.57, in a court proceeding before the filing of an adoption petition regarding the child; or

(c) has not signed a recognition of parentage under Minnesota Statutes, section 257.75, which has not been revoked or vacated.

(30) **"Records"** is as defined in Rule 3 of the Rules of Public Access to Records of the Judicial Branch. See also "adoption case records" defined in subdivision (2).

(31) **"Relative"** means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, any person age eighteen (18) or older who is the Indian child's grandparent, aunt, uncle, brother, sister, niece, nephew, first or second cousin, brother-in-law, sister-in-law, or stepparent as provided in the Indian Child Welfare Act of 1978, 25 U.S.C. section 1903(2). Distinguish "Individual Related to Child" under Rule 2.01(21).

(32) **"Responsible social services agency"** means the county agency acting as agent of the Commissioner of Human Services when the commissioner is legal guardian of the child.

(33) **"Working day"** refers solely to revocation of consents and means Monday through Friday, excluding any holiday as defined under Minnesota Statutes, section 645.44, subdivision 5.

(34) **"Intercountry adoption"** means adoption of a child by a Minnesota resident under the laws of a foreign country or the adoption under the laws of Minnesota of a child born in another country.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015; amended effective September 1, 2019.)

2019 Advisory Committee Comment

Rule 2.01(18) cites the definition of "Indian child" under the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, section 260.755, subdivision 8. Unlike the definition of Indian child under the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1903(4), MIFPA does not require a child who is eligible for tribal membership to be the biological child of a member of an Indian tribe. The Committee notes that the MIFPA definition provides a "higher standard of protection to the rights of the parent or Indian custodian" as contemplated by ICWA, 25 U.S.C. section 1921. See In re the Adoption of M.T.S., 489 N.W.2d 285, 288 (Minn. Ct. App. 1992).

Rule 2.01(19) cites the definitions of "Indian custodian" under ICWA, 25 U.S.C. section 1903(6), the ICWA regulations, 25 C.F.R. section 23.2, and MIFPA, Minnesota Statutes, section 260.755, subdivision 10. The ICWA regulation definition additionally provides that "[a]n Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law."

Rule 2.01(20) cites the definitions of "Indian tribe" under ICWA, 25 U.S.C. section 1903(5), the ICWA regulations, 25 C.F.R. sections 23.2 and 23.109, and MIFPA, Minnesota Statutes, section

260.755, subdivision 9. In situations where a child is a member or eligible for membership in more than one tribe, the ICWA definition states that the "Indian child's tribe is the tribe with which the Indian child has the most significant contacts." The MIFPA definition restates the ICWA definition, and then provides that if the tribe with which the child has the most significant contacts does not become involved with the outcome of the court actions, "any other tribe in which the child is eligible for membership that expresses an interest in the outcome may act as the Indian child's tribe." In contrast, 25 C.F.R. section 23.109, "How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?", sets out a different procedure. The applicability and interplay of these three definitions should be determined on a case-by-case basis.

Rule 3. Applicability of Other Rules and Statutes

3.01 Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to adoption matters.

3.02 Rules of Evidence

The Minnesota Rules of Evidence apply to adoption matters.

3.03 Rules of Guardian Ad Litem Procedure

The Minnesota Rules of Guardian Ad Litem Procedure, codified as Rules 901-907 of the General Rules of Practice for the District Courts, apply to adoption matters.

(Amended effective September 1, 2019.)

3.04 Indian Child Welfare Act and Other Minnesota Statutes

Adoption matters concerning an Indian child shall be governed by the Indian Child Welfare Act (ICWA), 25 U.S.C. sections 1901 to 1963; the ICWA regulations, 25 C.F.R. pt. 23; the Minnesota Indian Family Preservation Act (MIFPA), Minnesota Statutes, sections 260.751 to 260.835; and by these rules when these rules are not inconsistent with ICWA, the ICWA regulations, or MIFPA.

(Amended effective September 1, 2019.)

3.05 Court Interpreter Statutes, Rules, and Court Policies

The statutes, court rules, and court policies regarding appointment of court interpreters apply to adoption matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation pursuant to such statutes, court rules, and court policies.

3.06 Interstate Compact on the Placement of Children

Adoption matters concerning children crossing state lines for the purpose of adoption are subject to the provisions of the Interstate Compact on the Placement of Children, Minnesota Statutes, section 260.851.

(Amended effective July 1, 2014.)

3.07 Human Services Licensing Act

The Human Services Licensing Act, Minnesota Statutes, section 245A.03, applies to adoption matters.

3.08 Review of Progress toward Adoption of Children under State Guardianship

The requirements for the responsible social services agency's reasonable efforts to finalize adoption and for court review of progress towards adoption of children under guardianship of the Commissioner of Human Services are governed by Minnesota Statutes, sections 260C.601 to 260C.619.

(Added effective July 1, 2014; amended effective September 1, 2019.)

3.09 General Rules of Practice for the District Courts

Except as otherwise provided by statute or these rules, Rules 1, 2, 4-17, and 901-907 of the General Rules of Practice for the District Courts apply to adoption matters. Rules 3 and 101-814 of the General Rules of Practice for the District Courts do not apply to adoption matters. Rule 5 of the General Rules of Practice for the District Courts does not apply to attorneys who represent Indian tribes in adoption matters.

(Added effective July 1, 2015; amended effective January 1, 2022.)

2004 Advisory Committee Comment

The Human Services Licensing Act establishes that only Minnesota licensed adoption agencies or county social services agencies are authorized to complete adoption "placement activities" defined under Rule 2.01(v). Minnesota Statutes, section 245A.03, subdivisions 1 and 2.

2015 Advisory Committee Comment

Rule 3.09 is added to clarify the applicability of the General Rules of Practice to adoption matters.

Rule 5 of the General Rules of Practice provides, in part: "Lawyers who are admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone." General Rule 5 is being amended in 2015 to provide an "out-of-state lawyer is subject to all rules that apply to lawyers admitted in Minnesota, including rules related to e-filing." Consistent with the letter and spirit of the Indian Child Welfare Act, the Juvenile Protection Rules Committee does not want to place any barriers to participation by Indian tribes in adoption matters. For that reason, Rule 3.09 is added to provide that the requirements of Rule 5 dealing with pro hac vice and electronic filing are not applicable to attorneys who represent Indian tribes.

Rule 4. Time; Timelines

4.01 Computation of Time

Unless otherwise provided by statute, the day of the act or event from which the designated period of time begins shall not be included in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday. When a period prescribed or allowed is three days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes any holiday designated in Minnesota Statutes, section 645.44, subdivision 5, as a holiday for the state or any state-wide branch of government and any day that the U.S. mail does not operate. For purposes of calculating time

for the revocation of consent under Rule 33, the definition of "working day" under Rule 2.01(33) applies.

(Amended effective January 1, 2007; amended effective September 1, 2019.)

4.02 Additional Time After Service by U.S. Mail or Other Means

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other document and the notice or other document is served by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective July 1, 2015; amended effective September 1, 2019.)

Rule 5. Continuances

5.01 Findings

Upon its own motion or motion of a party, the court may continue a scheduled hearing or trial to a later date. To grant a continuance, the court shall make written findings or oral findings on the record that the continuance is necessary for the accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown. A final hearing pursuant to Rule 41 and a trial pursuant to Rule 44 shall be commenced and completed not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the petition is filed.

(Amended effective January 1, 2007.)

5.02 Notice of Continuance

The court shall provide written notice to the parties of the date and time of the continued hearing or trial.

5.03 Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with Minnesota Statutes, sections 259.20 to 259.89.

Rule 6. Referees and Judges

6.01 Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any adoption matter under the jurisdiction of the juvenile court.

6.02 Objection to Referee Presiding Over Matter

A party may object to having a referee preside over an adoption matter. A party's right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties within three (3) days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the adoption matter.

6.03 Transmittal of Referee's Findings and Recommended Order

Subdivision 1. Transmittal. Upon the conclusion of a hearing, the referee shall provide to a judge the written findings and recommended order, including the findings of fact, conclusions of

law, order for judgment, and adoption decree required pursuant to Rule 45. Notice of the findings and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee unless stayed, reversed, or modified by a judge upon review.

(Amended effective January 1, 2007; amended effective September 1, 2019.)

6.04 Review of Referee's Findings and Recommended Order

Subdivision 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties within five days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party of the name of the judge to whom the review has been assigned.

Subd. 3. Response to Motion for Review. The parties shall file and serve any responsive motion and memorandum within three days from the date of service of the motion for review.

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

(Amended effective September 1, 2019.)

2004 Advisory Committee Comment

If a party cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The motion, recommended order, and memorandum of law must still be filed within the five-day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

6.05 Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within three days of the transmittal of the findings and proposed order.

(Amended effective August 1, 2009; amended effective September 1, 2019.)

6.06 Removal of Judge or Referee

A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular judge or referee under the procedures and standards set forth in Rule 63 of the Minnesota Rules of Civil Procedure.

(Amended effective January 1, 2007; amended effective September 1, 2019.)

2019 Advisory Committee Comment

The amendments to Rule 6 are intended to establish a consistent standard for removal of judges or referees. Former Rule 6.03 governed the process for removing a particular referee from presiding over a case, either as of right or for cause. This closely tracked the process for removing a particular judge from presiding over a case, in former Rule 6.07. Both judges and referees are governed by the Code of Judicial Conduct, and the committee believes the same process should govern removals of judges and removals of referees. Accordingly, former Rule 6.03 has been deleted, and removals of judges and referees are now governed by Rule 6.06. The rule incorporates the judicial removal procedures of Civil Procedure Rule 63, which in turn allows for a limited opportunity to remove a judge as of right, and (as of July 1, 2018) incorporates the Code of Judicial Conduct. The same standard is used in the Rules of Criminal Procedure (Minn. R. Crim. P. 26.03, subd. 14) and the Rules of Juvenile Delinquency Procedure (Minn. R. Juv. Del. P. 22).

Rule 7. Access to Adoption Case Records and Birth Record Information

7.01 Access to Adoption Case Records Limited

Adoption case records and files maintained by the court relating to adoption matters shall not be available for inspection or copying by any person except:

(a) the court and court personnel;

(b) the Commissioner of Human Services or the Commissioner's representatives, including the responsible social services agency, local social services agency, or child placing agency;

(c) an agency acting under Minnesota Statutes, section 259.47, subdivision 10; or

(d) upon an order of the court expressly permitting inspection and copying pursuant to a petition filed as provided in Rule 7.02.

2004 Advisory Committee Comment

Rule 7.01 mirrors Minnesota Statutes, section 259.61, which does not permit party access to adoption case records or court files relating to adoption matters.

7.02 Petition to Access Adoption Case Records and Birth Record Information

Subdivision 1. Content of Petition. A person not listed in Rule 7.01 may only access adoption case records or birth record information relating to an adoption matter by filing with the court in the county which issued the final adoption decree a petition which sets forth the reasons why the person is requesting access to the case records or birth record information and shall include the following, if known:

(a) the procedural history of the adoption proceeding, including the date of adoption or of adoptive placement;

(b) the names and addresses of all persons who may be affected by the request;

(c) a factual statement about how granting the petitioner access to the adoption case records would be of greater benefit than not granting access;

(d) the particular information sought, including whether the request for disclosure includes the name of the biological parent;

(e) the date the petitioner contacted the Department of Health requesting identifying information on a birth record, if the petitioner is requesting identifying information in a birth record; and

(f) the legal basis, if any, given to the petitioner by the Department of Health, the Department of Human Services, or agency responsible for supervising the adoptive placement for the Department's or agency's refusal to disclose the requested information.

Subd. 2. Service of Petition.

(a) Request for Access to Identifying Information in Birth Record - Commissioner of Health. Where access to identifying information in the birth record is sought, the court administrator shall serve the petition on the Commissioner of Health by U.S. mail or through the E-Filing System if the Commissioner has the resources and technical capacity to accept electronic service. Upon service of the petition on the Commissioner of Health, the Commissioner shall supply to the court any affidavit of notification it has from the Department of Human Services pursuant to Minnesota Statutes, section 259.89, and any other information the Commissioner of Health has regarding the legal basis for its refusal to disclose the requested information, including whether:

(1) the biological parent has consented to disclosure of identifying information in the adoption record or birth record;

(2) the biological parent has filed an affidavit objecting to the release of identifying information which remains unrevoked; and

(3) the biological parent is living or deceased.

(b) Request for Access to Agency Records - Agency Supervising Adoptive Placement. When access to records of the agency responsible for supervising the adoptive placement is requested, the court administrator shall serve the petition on the director of the agency by U.S. mail or through the E-Filing System if the agency has the resources and technical capacity to accept electronic service.

(c) Other Persons. The court may order the petition to be served on such other persons as are necessary to its determination regarding whether nondisclosure of the requested information is of greater benefit than disclosure. If the court orders service upon the biological parent when the biological parent's address is known to the Department or the agency, the court may order the Department or the agency to disclose the biological parent's name and address to the court administrator who shall maintain the information in a confidential manner and cause the petition to be served on the biological parent in a confidential manner by certified U.S. mail designated "deliver to addressee only."

Subd. 3. Access to Information - Other Agencies. The court shall forward data and information to agencies and others as required by statute or these rules.

Subd. 4. Tribal Affiliation Information. Upon application by an Indian person who has reached the age of eighteen (18) and who was the subject of an adoptive placement, the court which entered the final adoption decree shall inform such individual of the tribal affiliation, if any, of the

individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Subd. 5. Counsel Sharing Record with Client. Unless otherwise expressly ordered by the court, counsel for a party may only share adoption case records with that party consistent with state and federal access rules.

(Amended effective July 1, 2015)

2004 Advisory Committee Comment

Rule 7.01, subdivision 4, sets forth the substantive law of the Indian Child Welfare Act.

7.03 Stepparent Adoption

In a stepparent adoption, upon written request from a parent whose parental rights would be or have been severed by the adoption under Minnesota Statutes, section 259.59, the court may confirm in writing whether or not the adoption decree has been granted, and if so, the date of the adoption decree.

7.04 Disclosure to Employer and Military Prohibited

Adoption case records and court files relating to adoption matters shall not be inspected, copied, disclosed, or released to the military services or to any present or prospective employer of the adopted person.

7.05 Protective Order

Upon motion pursuant to Rule 15, and for good cause shown, the court may at any time issue a protective order regarding any adoption case record or portion of such a record.

7.06 Suitability of Proposed Adoptive Parents

Pursuant to Minnesota Statutes, section 259.53, subdivision 3, paragraph (b), a judge of the court having jurisdiction of the adoption matter shall upon request disclose to a party to the proceedings or the party's counsel any portion of a report or record that relates only to the suitability of the proposed adoptive parents. In this disclosure, the judge may withhold the identity of individuals providing information in the report or record. When the judge is considering whether to disclose the identity of individuals providing information, the agency with custody of the report or record shall be permitted to present reasons for or against disclosure.

7.07 Release of Identifying Information

Subdivision 1. Request for Identifying Information. After first accessing or attempting to access the requested information pursuant to Minnesota Statutes, sections 259.83 and 259.89, an adopted person who is age nineteen (19) or older may petition the court for release of identifying information about a biological parent.

Subd. 2. Notice to Biological Parent. Upon petition for release of identifying information under Rule 7.02, including service of the petition on the agency that supervised the adoptive placement, the court may order such agency to locate and identify the biological parent's current address, including contacting the biological parent in a confidential manner as required under Minnesota Statutes, section 259.83. Pursuant to Minnesota Statutes, section 259.83, the agency may charge the petitioner a reasonable fee for its efforts to locate the biological parent. Not later than ninety (90) days after the order, or sooner if exigent circumstances exist, the agency shall inform the court of the results of the search.

Subd. 3. Biological Parent's Response to Notice.

(a) **Biological Parent's Consent.** If the biological parent has been located and consents to release of the identifying information, the petitioner shall advise the court when the requested identifying information is received at which time the court shall dismiss the petition.

(b) **Biological Parent's Refusal.** If the biological parent refuses release of identifying information, including through an affidavit objecting to the release of identifying information under Minnesota Statutes, section 259.83, the agency shall inform the court of the parent's refusal. If the parent's address is known, it shall be provided to the court administrator who shall maintain it in a confidential manner. Upon receipt of the parent's address, the court shall serve a copy of the petition requesting release of information and any supporting documentation on the biological parent by certified U.S. mail designated "deliver to addressee only."

(c) **Biological Parent Cannot be Located.** If the agency is unable to locate the biological parent's address, the agency shall inform the court about the efforts made to locate the parent's address. The court may then either direct the agency to conduct further search or grant the request for release of identifying information.

Subd. 4. Objection to Release of Identifying Information. A biological parent objecting to the release of identifying information shall have the opportunity to present evidence to the court that nondisclosure of identifying information is of greater benefit to the biological parent than disclosure to the adopted person. Such an objection shall be filed with the court within thirty (30) days of the contact and such objection shall be maintained by the court in a confidential manner.

7.08 Access to Original Birth Record Information; Decision

Subdivision 1. Adoptions Prior to August 1, 1977. A person adopted prior to August 1, 1977, may petition the court for disclosure of the original birth record. The petition shall include information necessary for the court to make the decision required in subdivision 2. Pursuant to Minnesota Statutes, section 259.89, for adoptions occurring prior to August 1, 1977, and after consideration of the interests of all known persons involved, if the biological parent is deceased and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the Commissioner of Health to disclose identifying information including the name of the biological parent on the original birth record.

Subd. 2. Adoptive Placements After August 1, 1982. Pursuant to Minnesota Statutes, section 259.83, for adoptive placements made on or after August 1, 1982, and after consideration of the interests of all known persons involved, if a living biological parent has filed an unrevoked affidavit objecting to the release of identifying information and the court determines that disclosure of the birth record information would be of greater benefit than nondisclosure, the court shall grant the petition and order the agency responsible for supervising the adoptive placement to disclose identifying information retained by the agency including the name of the biological parent, the biological parent's last known address, the birth date, and birth place of the biological parent named on the adopted person's original birth record.

2004 Advisory Committee Comment

In many situations where adult adopted persons seek information about their adoptions including the names of biological parents, the Department of Health or the agency responsible for supervising the adoptive placement have legal authority to release the requested information. The instances where the Department of Health and responsible agencies do not have such legal authority are covered by Rule 7.08.

7.09 Information to Adopted Persons and Others About Access to Birth and Adoption Records

Upon inquiry from an adopted person, a biological or adopted parent, or an adult genetic sibling, the court administrator shall give information about access to information about original birth records or adoption records as provided in Minnesota Statutes, sections 259.83 and 259.89, on an information sheet prepared by the State Court Administrator's Office.

Rule 8. Presence at Hearings

8.01 Attendance at Hearings

Only the parties, their legal counsel, their witnesses, persons entitled to notice pursuant to Rule 31, and any other persons authorized by the court may attend hearings relating to adoption matters.

(Amended effective January 1, 2007.)

8.02 Absence Does Not Bar Hearing

The absence from a hearing of any person who is entitled to notice of the hearing, except the petitioners, shall not prevent the hearing from proceeding, provided appropriate notice has been served.

8.03 Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or the guardian ad litem when it is in the best interests of the child to do so. If a person other than counsel or the guardian ad litem engages in conduct that disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

8.04 Record of Exclusion and Right to Continued Participation

Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. The counsel and guardian ad litem of the excluded person have the right to remain and participate in the hearing.

Rule 9. Ex Parte Communication

9.01 Ex Parte Communication Prohibited

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules.

2004 Advisory Committee Comment

Rule 9.01 reflects the prohibition against ex parte communication set forth in Minn. R. Prof. Cond. 3.5(g) and Cannon 3A(7) of the Code of Judicial Conduct.

9.02 Disclosure

The court shall fully disclose to all parties any prohibited ex parte communication.

Rule 10. Orders

10.01 Written or Oral Orders

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. Except for orders issued following a trial pursuant to Rule 44.06, all orders shall be filed with the court administrator within fifteen (15) days of the conclusion of the hearing. An order shall remain in full force and effect pursuant to law or until the occurrence of any of the following:

(a) issuance of an inconsistent order; or

(b) the order ends pursuant to the terms of the order.

(Amended effective August 1, 2009; amended effective July 1, 2014.)

10.02 Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

10.03 Service

Subdivision 1. Court Orders - Persons to be Served and Method of Service. Service of court orders shall be made by the court administrator upon each party and such other persons as the court may direct. Service may be made personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. If a party is represented by counsel, service shall be upon such counsel. Filing and service of an order by the court administrator shall be accomplished within ten days of the date the judicial officer delivers the order to the court administrator.

Subd. 2. Adoption Decree - Persons to be Served and Method of Service. The findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45 shall be served by the court administrator personally at the hearing, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court upon:

(a) each party;

(b) the Commissioner of Human Services for children who are:

(i) under guardianship of the Commissioner or a licensed child-placing agency according to Minnesota Statutes, section 260C.201, subdivision 11, or 260C.317;

(ii) placed by the commissioner, commissioner's agent, or licensed child-placing agency after a consent to adopt according to Minnesota Statutes, section 259.24, or under an agreement conferring authority to place for adoption according to Minnesota Statutes, section 259.25; or

(iii) adopted after a direct adoptive placement approved by the district court under Minnesota Statutes, section 259.47;

(c) the Secretary of the Interior and the child's tribal social services agency, if the child is an Indian child; and

(d) such other persons as the court may direct.

If a party is represented by counsel, delivery or service shall be upon such counsel. Filing and service of the adoption decree by the court administrator shall be accomplished within five

days of the date the judicial officer delivers the adoption decree to the court administrator. Upon request and payment of the applicable fee, the court administrator shall provide a certified copy of the adoption decree to persons entitled to receive a copy as permitted by statute or these rules.

(Amended effective September 1, 2019.)

Subd. 3. Replacement Birth Record. Upon the court administrator's receipt of the fee for the replacement birth record made payable to the Department of Health or equivalent agency in another state, the court administrator shall complete the certificate of adoption and send it to the Commissioner of Health in Minnesota or to the equivalent agency in any other state so that a replacement birth record may be generated. Any fee required by the Department of Health or equivalent agency in another state for a replacement birth record shall be paid by the petitioner. Any such fee shall be submitted by the petitioner to the court administrator at the time the request for a replacement birth record is made and shall be forwarded by the court administrator to the Department of Health.

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2015.)

10.04 Notice of Filing of Order and Adoption Decree

Each order or adoption decree delivered or mailed pursuant to Rule 10.03 shall be accompanied by a notice of filing of order. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

Rule 11. Recording and Transcripts

11.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device. If the recording is made by an electronic sound recording device, qualified personnel shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

11.02 Availability of Transcripts

Transcripts shall be available only to the parties or their counsel if represented.

11.03 Expense

A person who is unable to pay transcript preparation costs may apply for in forma pauperis status and a waiver of transcript costs under Minnesota Statutes, section 563.01.

(Amended effective September 1, 2019.)

Rule 12. Use of Telephone and Interactive Video

12.01 Motions and Conferences

The court may hear motions and conduct conferences by telephone or interactive video where testimony is not required and to resolve procedural matters.

12.02 Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or on the court's own initiative, the court may hold hearings and take testimony by telephone or interactive video.

(Amended effective September 1, 2019.)

12.03 In Court Appearance Not Precluded

This rule shall not preclude a party from being present in person before the court at a hearing.

Rule 13. Subpoenas

13.01 Subpoena for a Hearing or Trial

At the request of any party, the court administrator shall issue a subpoena for a witness in an adoption matter pending before the court. Alternatively, an attorney as an officer of the court may issue and sign a subpoena on behalf of the court where the matter is pending.

(Amended effective September 1, 2019.)

13.02 Form; Purpose; Notice

Subdivision 1. Form. Every subpoena shall state the name of the court and the title of the action.

Subd. 2. Purpose. A subpoena shall command each person to whom it is directed to, at a specified time and place:

(a) attend and give testimony at a final hearing pursuant to Rule 41, a deposition pursuant to Rule 17, or trial pursuant to Rule 44;

(b) bring the child to court; or

(c) produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 13.07.

(Amended effective January 1, 2007; amended effective September 1, 2019.)

13.03 Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of eighteen (18) who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with a person of suitable age and discretion residing at such abode. Upon written agreement of the witness, a subpoena may be served by U.S. mail, through the E-Filing System, or by e-mail or other electronic means.

(Amended effective July 1, 2015.)

13.04 Motion to Quash a Subpoena

Upon motion pursuant to Rule 15, a person served with a subpoena may move to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

(a) direct compliance with the subpoena;

(b) modify the subpoena if it is unreasonable or oppressive;

(c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or

(d) quash the subpoena.

13.05 Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five (5) days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or during the taking of the deposition, and upon notice of motion and motion to the deponent, request an order requiring compliance with the subpoena.

13.06 Subpoena for Taking Deposition; Place of Deposition

Subdivision 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 17, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend a deposition only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is designated by order of the court. A nonresident of the state may be required to attend in any county of the state.

13.07 Expenses

Subdivision 1. Witnesses. If the subpoena is issued at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness fees and mileage shall be paid by public funds. If the subpoena is issued at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. All other fees and mileage shall be paid by the requesting party, unless otherwise ordered by the court upon motion.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 17, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 13.04 or Rule 13.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties, move for an order directing the amount of such compensation at any time before the taking of the deposition.

13.08 Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal

service, the court may sua sponte or upon the motion of a party pursuant to Rule 15 proceed against the person for civil contempt of court pursuant to Rule 14, or the court may issue a warrant for the person's arrest, or both.

Rule 14. Contempt

14.01 Initiation

Contempt proceedings shall be initiated upon the alleged contemnor by personal service of an order to show cause, a motion for contempt, and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

(a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;

(b) a quotation of the specific applicable provisions ordered;

(c) a statement identifying the alleged contemnor's ability to comply with the order; and

(d) a statement identifying the alleged contemnor's failure to comply with the order.

14.02 Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. When possible, the supporting affidavit and the responsive affidavit shall contain paragraphs numbered to correspond to the paragraphs of the motion.

14.03 Hearing

The alleged contemnor shall appear in person before the court to be afforded an opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

14.04 Sentencing

Subdivision 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment shall be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment or Bench Warrant. The writ of attachment or bench warrant shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment or bench warrant to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six (6) months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

Rule 15. Motions

15.01 Form

Subdivision 1. Generally. An application to the court for an order shall be by motion. Motions may be made for any purpose authorized by statutes or these rules.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

(a) set forth the relief or order sought;

(b) state with particularity the grounds for the relief or order sought;

(c) be signed by the person making the motion;

(d) be filed with the court;

(e) be accompanied by a supporting affidavit; and

(f) be accompanied by a memorandum of law, if appropriate.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception to Requirement of Written Motion. Unless another party objects, a party may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

15.02 Service and Notice of Motion

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties and any other persons designated by the court.

Subd. 2. How Made. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice for the District Courts. In all other circumstances, service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Time.

(a) **Motion.** Except for motions pursuant to Rule 29, no motion shall be heard until the moving party serves the following documents on the other parties and files them with the court at least fourteen (14) days prior to the hearing:

(1) notice of motion and motion;

(2) proposed order;

(3) any affidavits and exhibits to be submitted in conjunction with the motion; and

(4) any memorandum of law the party intends to submit.

(b) **Response.** Any party responding to the motion shall serve the following documents on the moving party and other interested parties and shall file them with the court at least seven (7) days prior to the hearing:

(1) any memorandum of law the party intends to submit; and

(2) any relevant affidavits and exhibits.

(c) **Reply Memorandum.** The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy of such memorandum upon the party or parties and filing the original with the court administrator at least three (3) days before the hearing.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

15.03 Ex Parte Motion

A motion may be made ex parte without a hearing when permitted by statute or these rules. Upon issuance of an ex parte order, a hearing shall be scheduled at the earliest possible date upon the request of a party.

Rule 16. Signing of Pleadings, Motions, and Other Documents; Sanctions

16.01 Signing of Pleadings, Motions, and Other Documents

Subdivision 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other similar document filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, e-mail address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other similar document filed with the court and shall state the party's address, e-mail address if the party is a Registered User of the E-Filing System, and telephone number. If a party asserts that providing the address, e-mail address, and telephone number is not in the best interests of the child, the information may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice of motion and motion, the court may disclose the address, e-mail address, and telephone number as it deems appropriate. Service of a motion by a Registered User of the E-Filing System upon another Registered User shall be made in compliance with Rule 14.03 of the General Rules of Practice. All other service of a motion shall be made by personal service, U.S. mail, or e-mail or other electronic means agreed upon in writing by the person to be served.

Subd. 3. Signing Constitutes Certification. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that:

(a) the pleading, motion, or other document has been read;

(b) to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the pleading, motion, or other document is well-grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

The filing, serving, or submitting of a document through the E-Filing System constitutes certification of compliance with the signature requirements of Rule 16.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Advisory Committee Comment - 2012 Amendment

Rule 16.01, subdivision 3, is amended to add the last paragraph, which is intended to facilitate a pilot project on electronic filing and service, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The sole purpose of the amendment is to make explicit the status of "signatures" affixed to pleadings and other documents that are electronically filed and served. Whatever means are used to sign these documents, whether pen and ink, facsimile of a signature, or an indication that the document is signed (such as a "/s/ Pat Smith" notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.

16.02 Sanctions

If a pleading, motion, affidavit, or other similar document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, affidavit, or other similar document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including sanctions permitted pursuant to Rule 11 of the Minnesota Rules of Civil Procedure, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, affidavit, or other similar document, including reasonable attorney fees.

(Amended effective September 1, 2012; amended effective July 1, 2015.)

Rule 17. Discovery

17.01 Applicability

These discovery rules apply only to contested adoption matters and only to the extent permitted and upon the conditions ordered by the court. To the extent that there are any discovery issues that arise out of an uncontested adoption matter, any requests for information shall be addressed to the court which shall determine whether such discovery will be allowed and, if so, in what form and whether any protective order shall be issued.

17.02 Regulation of Discovery

Discovery in adoption matters shall be governed by Rules 26 through 37 of the Minnesota Rules of Civil Procedure, except discovery for a contested adoptive placement under Minnesota Statutes, section 260C.607, is governed by Rule 17 of the Rules of Juvenile Protection Procedure.

(Amended effective July 1, 2014.)

2014 Advisory Committee Comment

Rule 17.02 provides clarification that discovery in the case of a contested adoptive placement for a child under the guardianship of the Commissioner of Human Services is governed by the Rules of Juvenile Protection Procedure. This results from changes to the requirements of Minnesota Statutes, chapters 259 and 260C. In 2012, most adoption procedures regarding children under the guardianship of the commissioner were moved from Minnesota Statutes, chapters 259 to 260C. The relevant provisions in Minnesota Statutes, chapter 260C, include:

1. Requirements for reasonable efforts to finalize the adoption (see Minnesota Statutes, section 260C.605);

2. Strengthening provisions related to concurrent permanency planning, especially:

a. early court review of requirements for ensuring the child's relatives are notified of the child's foster care placement and of the need for a home, including the potential need for a legally permanent home if the child cannot return to the parent (see Minnesota Statutes, section 260C.221); and

b. giving relatives the right to notice of court hearings and to ask to be considered as a placement resource for the child (see Minnesota Statutes, sections 260C.204, 260C.221, and 260C.607); and

3. Clearly articulated state policy giving the responsible social services agency exclusive authority to make the adoptive placement while also providing opportunities for relatives or foster parents who want to be considered for placement to ask the court to direct the agency to take appropriate action to consider them and to challenge the agency's decision regarding the adoptive placement (see Minnesota Statutes, sections 260C.204 and 260C.607).

The purpose of the statutory amendments regarding a child under guardianship of the Commissioner of Human Services and accompanying provisions strengthening relative search and concurrent permanency planning requirements is to help reduce the length of time the child is in foster care and the number of moves the child experiences.

Rule 17.01 of the Minnesota Rules of Juvenile Protection Procedure provides for access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner in a motion under Minnesota Statutes, section 260C.607, is the entity that brought the action making the child a ward of the Commissioner of Human Services because the motion is brought in the context of the review of progress towards adoption. In the event that access to the file and materials in the petitioner's possession does not provide sufficient information for the movant, Rule 17.04 of the Rules of Juvenile Protection Procedure allows the judge to order additional discovery, including depositions.

Providing that the discovery rule in the Rules of Juvenile Protection Procedure applies to motions challenging adoptive placement decisions of the responsible agency made under Minnesota Statutes, chapter 260C, accomplishes two things:

1. It strikes a balance between the need for expedited decision-making and the child's need for stability with the parties' need to access information, especially when the party has had the ongoing right to raise issues about the agency's placement decision from very early in the proceedings; and

2. It continues the Rules of Juvenile Protection Procedure in effect until an adoption petition is filed. This is a bright line that helps avoid confusion about which rules or parts of rules (the Juvenile Protection Rules or Adoption Rules) apply to proceedings up to the point an adoption petition is filed.

Rule 18. Default

18.01 Procedure

If a party fails to appear, as that term is defined in Minn. R. Civ. P. 5.01, after being properly served with a notice pursuant to Rule 31, the court may take testimony in support of the petition. If the court determines that the petition is proven in accordance with the applicable standard of proof and the adoption is in the best interests of the child, the court shall enter an order granting

the relief sought. The court shall not grant a default if a party was not served with notice within the time period set forth in Rule 31. The court shall not grant a default regarding the issue of consent to adopt.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment

If consent is required and has not been given, the procedure that must be followed is to initiate a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

Rule 19. Settlement

19.01 Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in these rules.

19.02 Partial Settlement

The parties may enter into a settlement of one or more issues and shall proceed to final hearing pursuant to Rule 41. Any remaining contested issues shall proceed to trial pursuant to Rule 44.

(Amended effective January 1, 2007.)

19.03 Content of Settlement Agreement

Any settlement agreement shall include information that identifies:

(a) the parties to the agreement;

(b) the attorneys for the parties, if any;

(c) the judicial officer receiving the settlement;

(d) the date, time, and place the settlement was reached;

(e) any and all necessary statutory grounds and factual allegations to support the settlement agreement; and

(f) notarized signatures of all parties to the settlement.

(Amended effective July 1, 2015.)

19.04 Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the settlement agreement and voluntarily consents to the agreement. If the court approves the settlement agreement, it shall issue an order, judgment, or decree as appropriate. If the court rejects the settlement agreement, it shall advise the parties of this decision in writing or on the record and the matter shall proceed as any other contested adoption matter.

Rule 20. Parties

20.01 Party Status

Parties to an adoption matter shall include:

(a) the child's guardian ad litem;

(b) the adoptee, if age ten (10) or older;

(c) the child's legal custodian;

(d) the child's legal guardian;

(e) the petitioner;

(f) the adopting parent, in cases where the social services agency is the petitioner;

(g) the child's biological parent, if the consent of the biological parent is required and has not been executed pursuant to Rule 33;

(h) the child's Indian tribe, if the child is an Indian child and the tribe is or was a party in an underlying juvenile protection matter as defined in Rule 2.01(19) of the Minnesota Rules of Juvenile Protection Procedure;

(i) the responsible social services agency, if the child is under the guardianship of the Commissioner of Human Services;

(j) the child placing agency, if applicable;

(k) any person who intervenes as a party pursuant to Rule 21; and

(l) any person who is joined as a party pursuant to Rule 22.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective September 1, 2019.)

20.02 Rights of Parties

A party shall have the right to:

(a) notice pursuant to Rule 31;

(b) legal representation pursuant to Rule 23;

(c) be present at all hearings unless excluded pursuant to Rule 8;

(d) conduct discovery pursuant to Rule 17;

(e) bring motions before the court pursuant to Rule 15;

(f) participate in settlement agreements pursuant to Rule 19;

(g) subpoena witnesses pursuant to Rule 13;

(h) make argument in support of or against the petition;

(i) present evidence;

(j) cross-examine witnesses;

(k) ask the court to order that witnesses be sequestered;

(l) request review of the referee's findings and recommended order pursuant to Rule 6, if a referee presides over the matter;

(m) bring post-trial motions pursuant to Rules 46 and 47;

(n) appeal from orders of the court pursuant to Rule 48; and

(o) any other rights as set forth in statute or these rules.

(Amended effective January 1, 2007.)

20.03 Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address or e-mail address; Registered Users of the E-Filing System shall also update any change of e-mail address in the E-Filing System. For good cause shown, the court may grant a party's request to keep the party's address confidential.

(Amended effective July 1, 2015.)

Rule 21. Intervention

21.01 Intervention of Right

Subdivision 1. Child. A child younger than age ten (10) who is the subject of the adoption matter has the right to intervene as a party at any point in the proceeding.

Subd. 2. Indian Tribe. In any adoption matter relating to an Indian child, if the child's Indian tribe is not already a party pursuant to Rule 20.01(g), the child's tribe has the right to intervene as a party at any point in the proceeding.

Subd. 3. Local Social Services Agency. The local social services agency has the right to intervene as a party at any point in the proceeding.

Subd. 4. Procedure. A child younger than age ten (10), the child's Indian tribe, or the local social services agency may intervene as a party by filing with the court and serving upon the parties a notice of intervention as a matter of right. The notice of intervention form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party files and serves a written objection within ten (10) days of the date of service.

21.02 Parent Intervention Prohibited

No parent who has executed a valid consent to the adoption or whose parental rights to the child who is the subject of the adoption petition have been terminated may intervene in an adoption matter.

21.03 Permissive Intervention

Subdivision 1. Generally. Any person or agency may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Subd. 2. Procedure. A person or agency seeking permissive intervention shall file with the court and serve upon all parties a notice of motion and motion to intervene pursuant to Rule 15. The motion form shall be available from the court administrator and shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

21.04 Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time before intervention is accomplished or denied. The intervention shall be effective as of the date accomplished or granted and shall not affect prior proceedings and decisions of the court, unless otherwise ordered by the court or required by the Indian Child Welfare Act, 25 U.S.C., section 19.01, et seq.

Rule 22. Joinder

22.01 Procedure

The court sua sponte, or upon notice of motion and motion of a party pursuant to Rule 15, may join a person or entity as a party if the court finds that joinder is:

(a) necessary for a just and complete resolution of the matter; and

(b) in the best interests of the child.

The moving party shall serve the motion upon all parties and the person proposed to be joined.

Rule 23. Right to Representation; Appointment of Counsel

23.01 Right to Representation

Every party has the right to be represented by counsel in an adoption matter, including through appeal if any. This right attaches no later than when the party first appears in court.

23.02 Appointment of Counsel

Subdivision 1. Adoptee. Pursuant to Minnesota Statutes, section 259.65, in any adoption matter the court may appoint an attorney for the person being adopted. The court may inquire into the ability of the adopting parent to pay for the attorney's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the attorney's fees.

Subd. 2. Putative Father. Pursuant to Minnesota Statutes, section 259.52, subdivision 12, upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, shall be appointed counsel at public expense.

2004 Advisory Committee Comment

Rule 23.01 sets forth the basic principle that each party appearing in court has the right to be represented by counsel. Each party, however, does not necessarily have the right to court appointed counsel as provided in Rule 23.02. The phrase "at public expense" is not defined in the statute.

Rule 23.01, subdivision 1, is consistent with Minnesota Statutes, section 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or guardian ad litem, or both, for the person being adopted. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed,....provided that such parents be given a reasonable opportunity to be heard."

Rule 23.02, subdivision 2, is consistent with Minnesota Statutes, section 259.52, subdivision 12, which provides: "Upon proof of indigency, a putative father who has registered with the Minnesota Fathers' Adoption Registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator must have counsel appointed at public expense."

23.03 Representation of Responsible Social Services Agency

In any adoption matter in which the Commissioner of Human Services is the legal guardian for the child, the responsible social services agency shall be represented by its county attorney.

23.04 Biological Parent Counsel in Direct Placement Adoption

Subdivision 1. Right to Counsel. Pursuant to Minnesota Statutes, section 259.47, subdivision 5, in a direct placement adoption, upon the request of a biological parent, separate legal counsel shall be made available to the biological parent at the expense of the prospective adoptive parents for legal services provided in a direct placement adoption. The prospective adoptive parent shall be required to provide legal counsel for only one parent unless the biological parents elect joint legal representation.

Subd. 2. Waiver of Right to Counsel. A biological parent may waive the right to counsel only by written waiver signed and filed with the court at the time the biological parent's consent to the adoption is executed pursuant to Minnesota Statutes, section 259.47, subdivision 7.

Subd. 3. Expiration of Right to Counsel. The right to legal counsel shall continue until consents become irrevocable, but not longer than seventy (70) days after placement. If the parent's consent to adoption has not been executed within sixty (60) days of placement, the right to counsel under Rule 23 and Minnesota Statutes, section 259.47, subdivision 5, shall end at that time.

Subd. 4. Dual Representation Prohibited. Representation of a biological parent and a prospective adoptive parent by the same attorney is prohibited.

(Amended effective January 1, 2007.)

23.05 Certificate of Representation

An attorney representing a client in an adoption matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

23.06 Withdrawal of Counsel

An attorney representing a party in an adoption matter, including a public defender, shall continue representation until such time as:

(a) all proceedings in the matter have been completed;

(b) the attorney has been discharged by the client in writing or on the record;

(c) the court grants the attorney's ex parte motion for withdrawal; or

(d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

23.07 Appointment of Counsel in Adoption Involving an Indian Child

Subdivision 1. Parent or Indian Custodian. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court appointed counsel in any removal, placement, or termination proceeding.

Subd. 2. Indian Child. The court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

(Added effective January 1, 2007.)

Rule 24. Guardian Ad Litem

24.01 Appointment

Subdivision 1. Generally. A guardian ad litem appointed to serve in a juvenile protection matter, as defined in Rule 2.01(19) of the Minnesota Rules of Juvenile Protection Procedure, shall continue to serve in the adoption matter following a transfer of guardianship to the Commissioner of Human Services. In any other adoption matter, the court may appoint a guardian ad litem. The guardian ad litem shall advocate for the best interests of the child and shall continue to serve until the adoption decree is entered pursuant to Rule 45.

Subd. 2. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective September 1, 2019.)

2004 Advisory Committee Comment

Rule 24.01, subdivision 1, is consistent with Minnesota Statutes, section 259.65, which provides: "In any adoption proceeding, the court may appoint an attorney or a guardian ad litem, or both, for the person being adopted."

Rule 24.01 is intended to reflect the clear legislative mandate that the guardian ad litem in a juvenile protection matter shall continue to serve until the adoption decree is entered. See Minnesota Statutes, section 260C.317, subdivision 3, paragraph (b), and Minn. R. Juv. Prot. P. 26.03. It is preferable that the same individual serve continuously as the child's guardian ad litem for both the juvenile protection matter and the adoption matter. However, if that is not practicable, the guardian ad litem program shall assign another individual to serve as the child's guardian ad litem in the adoption matter following the termination of parental rights in the juvenile protection matter. Upon the assignment of a new individual to serve as guardian ad litem, the court shall issue a new appointment order.

24.02 Responsibilities

The guardian ad litem shall carry out the responsibilities set forth in the Minnesota Rules of Guardian Ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in the Minnesota Rules of Guardian Ad Litem Procedure.

24.03 Reimbursement

The court may inquire into the ability of the adopting parent to pay for the guardian ad litem's services and, after giving the adopting parent a reasonable opportunity to be heard, may order the adopting parent to pay the guardian ad litem's fees.

2004 Advisory Committee Comment

Rule 24.03 is consistent with Minnesota Statutes, section 259.65, which provides: "The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed,...provided that such parents shall be given a reasonable opportunity to be heard."

Rule 25. Methods of Filing and Service

25.01 Types of Filing

Subdivision 1. Generally; Electronic Filing. When a document is required to be filed electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice for the District Courts. Otherwise, any document may be filed with the court personally, by U.S. mail, electronically through the E-Filing System, or by facsimile transmission.

Subd. 2. Filing by Facsimile Transmission. Any document not required to be filed electronically through the E-Filing System may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the Supreme Court shall be used for filing in accordance with this rule.

Subd. 3. Fees; Original Document. Within five (5) days after the court has received the facsimile transmission, the party filing the document shall forward the following to the court:

(a) a $25 transmission fee for each 50 pages, or part thereof, of the filing, unless otherwise provided by statute or rule or otherwise ordered by the court;

(b) any bulky exhibits or attachments; and

(c) the applicable filing fee or fees, if any.

If a document is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Subd. 4. Noncompliance. Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the adoption matter, proceeding, or any part thereof.

(Amended effective January 1, 2007; amended effective September 1, 2012; amended effective July 1, 2015.)

25.02 Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein. Unless otherwise provided by these rules or ordered by the court, the sheriff or other person at least 18 years of age and not a party to the action may make personal service of a summons or other process. Any social services reports or guardian ad litem reports may be served directly by the social worker and guardian ad litem. Whenever personal service is required under these rules, the court may authorize alternative personal service pursuant to Rule 25.02, subdivision 5.

Service Outside United States. Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place outside the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(b) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(c) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the person to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

Subd. 2. U.S. Mail. Service by U.S. mail means placing the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication substitutes for personal service when authorized by the court. Service by publication means the publication in full of the summons, notice of hearing, or other documents in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to Rule 31.04, subdivision 2. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing diligent efforts to locate the person to be served. Service by publication shall be completed by the petitioner in a location approved by the court. The published summons shall be directed to the person for whom personal service was not accomplished and shall not include the child's name or initials. In cases involving an Indian child, if the identity or location of the parent or Indian custodian and the child's Indian tribe cannot be determined, the summons and petition shall be served upon the Secretary of the Interior pursuant to 25 U.S.C., section 1912.

Subd. 4. Electronic Service. When authorized or required by Rule 14 of the General Rule of Practice, documents, except those required by these rules to be served personally or by registered U.S. mail return receipt requested, may, or where required, shall be served electronically by following the procedures of that rule and will be deemed served in accordance with the provisions of that rule.

Subd. 5. Waiver of Personal Service. (a) Waivers of personal service may be made by mailing by first-class U.S. mail, postage prepaid to the person to be served, a copy of the document to be served together with two copies of a notice and waiver of service by mail conforming substantially to a form to be developed by the State Court Administrator, along with a return envelope, postage prepaid, addressed to the sender.

(b) Any person served by U.S. mail who receives a notice and waiver of service by mail form shall, within 20 days of the date the notice and waiver form is mailed, complete the waiver part of the form and return one copy of the completed form to the serving party.

(c) If the serving party does not receive the completed waiver form within 20 days of the date it is mailed, service is not valid upon that party. The serving party shall then serve the document by any means authorized under this rule.

(d) The court may order the costs of personal service to be paid by the person served, if such person does not complete and return the notice and waiver form within 20 days of the date it is mailed.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective September 1, 2012; amended effective July 1, 2015; amended effective September 1, 2019.)

25.03 Service by Electronic Means

Unless these rules require personal service or service through the E-Filing System, any document may be served by e-mail or other electronic means upon written or on the record agreement of the person to be served.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 25.03 authorizes service by "electronic means." Pursuant to Rule 14.01(a)(7) of the General Rules of Practice for the District Courts, "electronic means" is defined as "transmission using computers or similar means of transmitting documents electronically, including facsimile transmission." Because "electronic means" includes "facsimile transmission," the reference in Rule 25.03 to "facsimile transmission" has been deleted.

25.04 Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party shall be deemed service upon the party. Service upon the county attorney shall be deemed to be service upon the responsible social services agency.

25.05 Service of Subpoena

A subpoena requiring the attendance of a witness at a hearing or trial may be served upon the witness at any place within the state.

25.06 Completion of Service

Personal service is complete upon delivery of the document. Service by U.S. mail is complete upon mailing to the last known address of the person to be served. Completion of service by electronic means is governed by Rule 14.03(e) of the Minnesota Rules of General Practice for the District Courts.

(Amended effective July 1, 2015.)

2015 Advisory Committee Comment

With respect to completion of service, Rule 14.03(e) of the General Rules of Practice for the District Courts provides "service is complete upon completion of the electronic transmission of the document to the E-Filing System notwithstanding whether the document is subsequently rejected for filing by the court administrator. Service by facsimile transmission, where authorized, is complete upon the completion of the facsimile transmission." Similar to service by U.S. mail, which is complete when sent rather than when received, the intent of Rule 25.06 is that service through the E-Filing System is complete when the document is transmitted to the E-Filing System and service by e-mail is complete when the e-mail is sent.

25.07 Proof of Service

On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

(a) whether the document was served;

(b) how the document was served;

(c) the person on whom the document was served; and

(d) the date, time, and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

Rule 26. Commencement of Adoption Matter

26.01 Commencement of an Adoption Matter

An adoption matter is commenced by filing:

(a) a motion for a direct placement preadoptive custody order pursuant to Rule 29;

(b) an adoption petition; or

(c) a motion for waiver of agency placement pursuant to Minnesota Statutes, section 259.22, subdivision 2, clause (4), when the child is not under the guardianship of the Commissioner of Human Services.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective September 1, 2019.)

2014 Advisory Committee Comment

A motion for waiver of agency placement is not available for a child under the guardianship of the Commissioner of Human Services. Under Minnesota Statutes, section 260C.613, subdivision 1, the responsible social services agency has exclusive authority to make an adoptive placement for a child under the guardianship of the commissioner. A challenge to the agency's adoptive placement of a child under the guardianship of the commissioner is brought in a hearing under Minnesota Statutes, section 260C.607, subdivision 6.

26.02 Post-Permanency Review Hearings Continue

The filing of an adoption petition does not terminate the in-court review hearings required at least every 90 days under Rule 51.03 of the Minnesota Rules of Juvenile Protection Procedure.

(Added effective January 1, 2007; amended effective September 1, 2019.)

Rule 27. Stepparent Adoption

A stepparent adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to stepparent adoptions, except for Rule 28 dealing with agency adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

(Added effective January 1, 2007.)

Rule 28. Agency Adoption

An agency adoption shall be commenced by the filing of a petition pursuant to Rule 35. All other Rules apply to agency adoptions, except for Rule 27 dealing with stepparent adoptions, Rule 29 dealing with direct placement adoptions, and Rule 30 dealing with intercountry adoptions.

(Added effective January 1, 2007.)

Rule 29. Direct Placement Adoption

29.01 Notice of Motion and Motion for a Preadoptive Custody Order

In a direct placement adoption, whether involving an emergency or nonemergency situation, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

(a) the biological mother;

(b) the biological father if his consent is required;

(c) any parent whose consent is required; and

(d) the Indian tribe, if the child is an Indian child.

(Amended effective January 1, 2007.)

29.02 Timing

A notice of motion and motion for a preadoptive custody order may be filed up to sixty (60) days before the adoptive placement is to be made and may be filed prior to the birth of the baby.

(Amended effective January 1, 2007.)

29.03 Content

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) a statement that the biological parents have:

(1) provided the social and medical history to the prospective adoptive parent using the form prescribed by the Commissioner of Human Services;

(2) received a written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

(3) been notified of their right to receive counseling;

(b) the name of the agency chosen by the adoptive parent to supervise the adoptive placement and complete the post-placement assessment;

(c) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

(1) the child was conceived as the result of incest or rape;

(2) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or the child; or

(3) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(d) a statement that the prospective adoptive parent meets the residence requirements;

(e) an affidavit of intent to remain a resident of the state for at least three (3) months after the child is placed in the prospective adoptive home;

(f) a notice of intent to file an adoption petition;

(g) the adoption study report required pursuant to Rule 37;

(h) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the biological parents, any agency, attorney, or other party in connection with the prospective adoption; and

(i) the name of counsel for each party, if any.

Subd. 2. Emergency Direct Placement. In an emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of the child or other extraordinary circumstances which prevented the completion of the requirements under subdivision 1;

(b) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

(1) the child was conceived as the result of incest or rape;

(2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child; or

(3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(c) a statement that the biological parents:

(1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

(2) have been notified of their right to receive counseling; and

(d) either:

(1) the adoption study report pursuant to Rule 37; or

(2) affidavits stating whether the prospective adoptive parents or any person residing in the household have been convicted of a crime.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

29.04 Decision and Order

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, the court shall decide a motion for a preadoptive custody order within fifteen (15) days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

Subd. 2. Emergency Direct Placement.

(a) **Expedited Emergency Order.** An order granting or denying a motion for an emergency preadoptive custody order shall be issued within twenty-four (24) hours of the time it is filed. Any district court judge may decide a motion for emergency preadoptive custody. An order granting the motion shall direct that an adoption study be commenced immediately, if that has not already occurred, and that the agency conducting the study shall supervise the emergency placement.

(b) **Expiration of Emergency Order.** A court may issue an emergency order granting preadoptive custody of a child to a prospective adoptive parent for up to fourteen (14) days. An emergency order under this Rule expires fourteen (14) days after it is issued. If the requirements for nonemergency direct placement under this Rule are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court decides the motion. The court shall decide the preadoptive custody motion within seven (7) days of filing.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

Rule 30. Intercountry Adoptions

30.01 Adoption of a Child by a Resident of Minnesota Under the Laws of a Foreign Country

Subdivision 1. Validity of a Foreign Adoption. The adoption of a child by a resident of Minnesota under the laws of a foreign country is valid and binding under the laws of Minnesota if the validity of the foreign adoption has been verified by the granting of an IR-3 or IH-3 visa for the child by the United States Citizenship and Immigration Services.

Subd. 2. New Birth Record.

(a) **Petition.** The adoption of a child under the laws of a foreign country is valid in Minnesota pursuant to Rule 30.01 and the petitioner may petition the court in petitioner's county of residence for a decree:

(1) confirming and recognizing the adoption;

(2) changing the child's legal name, if requested; and

(3) authorizing the Commissioner of Health to create a new birth record for the child pursuant to Minnesota Statutes, section 144.218, subdivision 2.

(b) **Documents to be Submitted.** The court shall issue the decree described in subdivision 2(a) upon receipt of the following documents:

(1) a petition signed by the adoptive parent under oath or penalty of perjury under Minnesota Statutes, section 358.116:

(i) stating that the adoptive parent completed the adoption of the child under the laws of a foreign country;

(ii) stating that the adoption is valid in this state under Rule 30.01; and

(iii) requesting that the court issue a decree confirming and recognizing the adoption and authorizing the Commissioner of Health to issue a new birth record for the child;

(2) a copy of the child's original birth record, if available;

(3) a copy of the final adoption certificate or equivalent as issued by the foreign jurisdiction;

(4) a copy of the child's passport, including the United States visa indicating IR-3 or IH-3 immigration status; and

(5) a certified English translation of any of the documents listed in (2) through (4) above.

Subd. 3. Action Upon Issuance of Adoption Decree. Upon issuing an adoption decree under this Rule, the court shall forward a copy of the adoption decree to the Commissioner of Human Services. The court shall also complete and forward to the Commissioner of Health the certificate of adoption, unless another form has been specified by the Commissioner of Health.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

30.02 Adoption Under the Laws of Minnesota of a Child Born in Another Country

Subdivision 1. Agency Adoption. An adoption of a child placed by an agency shall be commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 28 dealing with agency adoptions.

Subd. 2. Direct Placement Adoption. A direct placement adoption of a child born in another country shall be commenced by the filing of a petition or other document pursuant to Rule 35 and thereafter shall proceed pursuant to Rule 29 dealing with direct placement adoptions.

(Added effective January 1, 2007.)

30.03 Post-Adoption Report

If a child is adopted by a resident of Minnesota under the laws of a foreign country or if a resident of Minnesota brings a child into the state under an IR-3, IH-3, IR-4, or IH-4 visa issued for the child by the United States Citizenship and Immigration Services, the post-adoption reporting requirements of the country in which the child was adopted, applicable at the time of the child's adoption, shall be given full faith and credit by the courts of Minnesota and apply to the adoptive placement of the child.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

Rule 31. Notice of Final Hearing or Trial

31.01 Notice

Subdivision 1. Definition. A notice of hearing is a document providing notice of the specific date, time and place of a hearing or trial upon an adoption petition.

Subd. 2. Upon Whom.

(a) **Generally.** Except as provided in paragraph (b), the petitioner shall serve a notice of hearing and adoption petition upon:

(1) all parties under Rule 20;

(2) the parent of a child if:

(i) the person's name appears on the child's birth record as a parent;

(ii) the person has substantially supported the child;

(iii) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;

(iv) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;

(v) the person has been adjudicated the child's parent;

(vi) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or

(vii) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage which has not been revoked or vacated;

(3) a person who has timely registered pursuant to Minnesota Statutes, section 259.52;

(4) the responsible social services agency;

(5) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and

(6) the child's Indian tribe, if the child is an Indian child.

(b) **Child Under Guardianship of Commissioner of Human Services.** For a child under the guardianship of the Commissioner of Human Services, the court administrator shall serve a notice of hearing and petition, unless service of the petition has already been accomplished, upon:

(1) the child's tribe if the child is an Indian child;

(2) the responsible social services agency;

(3) the child's guardian ad litem;

(4) the child, if the child is age ten or over;

(5) the child's attorney;

(6) the adopting parent; and

(7) the county attorney.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

31.02 Notice Not Required

Without express order of the court, a notice of the hearing and petition shall not be served upon:

(a) persons whose parental rights have been terminated or who have consented to the adoption of the child;

(b) persons who have not timely registered pursuant to Minnesota Statutes, section 259.52;

(c) persons who have waived notice of hearing pursuant to Minnesota Statutes, section 259.49, subdivision 1;

(d) a putative father who has timely registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, but who fails to timely file an intent to claim parental rights form with the court; and

(e) a putative father who has registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, and who has filed a completed denial of paternity form and a consent to adoption form.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

31.03 Content of Notice of Hearing

A notice of hearing shall contain or have attached:

(a) an adoption petition;

(b) a statement setting forth the time and place of the hearing;

(c) a statement describing the purpose of the hearing as either:

(1) a final hearing pursuant to Rule 41 if it is an uncontested adoption matter; or

(2) a pretrial conference pursuant to Rule 43 if it is a contested adoption matter;

(d) a statement explaining the right to representation pursuant to Rule 23;

(e) a statement explaining intervention pursuant to Rule 21;

(f) a statement explaining that if the person fails to appear at the hearing, the court may still conduct the hearing and grant the adoption pursuant to Rule 18; and

(g) a statement explaining that it is the responsibility of the individual to notify the court administrator of any change of address.

(Amended effective January 1, 2007.)

31.04 Service of Notice of Hearing

Subdivision 1. Timing. A notice of hearing shall be served, within or without the state, at least fourteen (14) days before the date of a final hearing in an uncontested matter and at least thirty (30) days before the date of the commencement of the trial in a contested matter.

Subd. 2. Method of Service - Parent.

(a) **Generally.**

(1) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service pursuant to Rule 25.02.

(2) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the diligent effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks of published notice to be given pursuant to Rule 25.02, subdivision 3, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted, it may continue the proceeding and require that such notice

as it deems proper shall be served on any person. In the course of the proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Method of Service - Parties Where Child Under Guardianship of Commissioner of Human Services. For a child under the guardianship of the Commissioner of Human Services, the court administrator shall serve the notice of hearing and petition upon the parties personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 4. Method of Service - Indian Tribe. The petitioner shall serve the notice of hearing by registered U.S. mail with return receipt requested upon the Indian tribe if the child is an Indian child.

Subd. 5. Method of Service - Others. (a) If the petitioner is a Registered User of the E-Filing System or required to electronically serve documents under Rule 14 of the General Rules of Practice for the District Courts, the petitioner shall serve the notice of hearing through the E-Filing System. This does not apply to service upon Indian tribes.

(b) The petitioner shall serve the notice of hearing by U.S. mail upon the child's guardian ad litem; the child, if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency; and any person who has timely complied with the requirements of Minnesota Statutes, section 259.52.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 31.04, subdivision 1, is amended to require that the notice of hearing must be served at least fourteen (14) days, rather than ten (10) days, prior to the date of the hearing in an uncontested matter, which is consistent with the requirements of Minnesota Statutes, section 259.49, subdivision 2.

Rule 32. Minnesota Fathers' Adoption Registry

32.01 Requirement to Search Minnesota Fathers' Adoption Registry Before Adoption Petition Granted; Proof of Search

Subdivision 1. Requirement to Search Registry. Except for intercountry adoptions, an adoption petition for a child born on or after January 1, 1998, shall not be granted unless the Minnesota Fathers' Adoption Registry has been searched to determine whether a putative father is registered in relation to the child who is the subject of the adoption petition. The search shall be conducted no sooner than thirty-one (31) days following the birth of the child.

Subd. 2. Proof of Search. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the Commissioner of Health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the Minnesota Fathers' Adoption Registry has been searched shall be filed with the court prior to entry of any final adoption decree. The filing of a certified copy of the order from a juvenile protection matter containing a finding that certification of the requisite search of the Minnesota Fathers' Adoption Registry was filed with the court in that matter shall constitute proof of search.

2004 Advisory Committee Comment

For children born before January 1, 1998, the Advisory Committee recommends that the best practice is for the petitioner to include with the petition a confirmation from the Department of Health that no one has filed a notice of intent to retain parental rights.

32.02 Fees for Minnesota Fathers' Adoption Registry

Pursuant to Minnesota Statutes, section 259.52, subdivision 14, in addition to any other filing fees, the court administrator shall assess an adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the Minnesota Fathers' Adoption Registry. The court administrator shall forward fees collected under this rule to the Commissioner of Finance for deposit into the state government special revenue fund to be appropriated to the Commissioner of Health to administer the Minnesota Fathers' Adoption Registry. The fee shall not be assessed in adoptions or re-adoptions of children adopted in intercountry adoptions.

Rule 33. Consent to Adoption

33.01 Persons and Agencies Required to Consent

Subdivision 1. Generally. Except as provided in subdivision 2, written consent to an adoption is required by the following:

(a) the child to be adopted, if the child is fourteen (14) years of age or older, and the child's consent must be consent to adoption by a particular person;

(b) the adult to be adopted, whose consent shall be the only consent required;

(c) a registered putative father, if pursuant to Rule 32 he has:

(1) been notified under the Minnesota Fathers' Adoption Registry;

(2) timely filed an intent to claim parental rights form; and

(3) timely filed a paternity action;

(d) the child's parents or legal guardian, except:

(1) a parent not entitled to notice of the proceedings;

(2) a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution and upon whom notice has been served as required under Rule 31; and

(3) a parent whose parental rights to the child have been terminated by a juvenile court order or through a decree in a prior adoption matter; and

(e) if there is no parent or legal guardian qualified to consent to the adoption, the consent shall be given by the agency having authority to place the child for adoption, which shall have the exclusive right to consent to the adoption of such child.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) Any consent by a parent whose rights to the child have not been terminated shall be pursuant to Minnesota Statutes, section 260C.515, subdivision 3, and that consent shall be irrevocable upon acceptance by the court except as otherwise provided in Minnesota Statutes, section 260C.515, subdivision 3(2)(i). A parent of an Indian child may consent to the adoption of the child according

to the Indian Child Welfare Act, 25 U.S.C., section 1913, and that consent may be withdrawn for any reason at any time before the entry of a final decree of adoption.

(b) When the child to be adopted is age fourteen (14) years or older, the child's written consent to adoption by the adopting parent is required.

(c) Consent by the responsible social services agency or the Commissioner of Human Services is not required because the adoptive placement has been made by the responsible social services agency according to Minnesota Statutes, section 260C.613, subdivision 1.

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

2004 Advisory Committee Comment

The Advisory Committee recommends that, with respect to a parent who has abandoned the child or a parent who has lost custody of the child through a divorce decree or a decree of dissolution, it is best practice to either obtain a parent's consent as provided under Rule 31 or to commence a termination of parental rights proceeding pursuant to the Minnesota Rules of Juvenile Protection Procedure.

2014 Advisory Committee Comment

When a child, age 14 or older, is under the guardianship of the Commissioner of Human Services, the child must give consent to adoption by the particular person seeking to adopt the child. The child may not withhold "general consent" to the responsible social services agency working to find an appropriate adoptive home and making reasonable efforts to finalize adoption. See Minnesota Statutes, section 260C.605, subdivision 2.

33.02 Notice of Intent to Consent to Adoption

Subdivision 1. Consent of Biological Parents. Unless all biological parents from whom consent is required under Rule 33.01 are involved in making the adoptive placement and intend to consent to the adoption, a biological parent who intends to execute a consent to an adoption shall give notice to the child's other biological parent of the intent to consent to the adoption prior to or within seventy-two (72) hours following the placement of the child if the other biological parent's consent to the adoption is required under Rule 33.01. Notice of intent to consent to adoption shall be provided to the other biological parent according to the Minnesota Rules of Civil Procedure for service of a summons and complaint. The biological parent who receives notice shall have sixty (60) days after the placement of the child to serve upon the other biological parent either a consent pursuant to Rule 33.01 or a written objection to the adoption. If the biological parent who receives notice fails to consent or to respond with a written objection to the adoption within sixty (60) days after the adoptive placement, that parent shall be deemed to have irrevocably consented to the child's adoption.

Subd. 2. Consent of Minors. If an unmarried parent who consents to the adoption of a child is under eighteen (18) years of age, the consent of the minor parent's parents or legal custodian or legal guardian, if any, also shall be required. If either or both parents are not required to consent pursuant to Rule 33.01(d), the consent of such parent shall be waived and the consent of the legal custodian or legal guardian only shall be sufficient. If there be neither parent nor legal custodian or legal guardian qualified to give such consent, the consent may be given by the Commissioner of Human Services. The responsible social services or child placing agency overseeing the adoption matter shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy, or a physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member, or physician shall not be binding on the minor parent. If

the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy, or a physician, the county shall bear that cost. A parent or legal custodian or legal guardian of a minor or incapacitated person may not delegate the power to consent to adoption of a minor ward under Minnesota Statutes, sections 524.5-101 to 524.5-502.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

33.03 Execution of Consent to Adoption

Subdivision 1. Requirements of Consent.

(a) **Generally.** Except as provided in subdivision 3, all consents to an adoption shall:

(1) be in writing;

(2) be executed before two competent witnesses;

(3) be acknowledged by the consenting party;

(4) include a notice to the parent of the substance of Minnesota Statutes, section 259.24, subdivision 6a, providing for the right to withdraw consent; and

(5) include the following written notice in all capital letters at least one-eighth inch high: "The agency responsible for supervising the adoptive placement of the child will submit your consent to adoption to the court. If you are consenting to adoption by the child's stepparent, the consent will be submitted to the court by the petitioner in your child's adoption. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

(b) **Child Under Guardianship of Commissioner of Human Services.** Pursuant to Minnesota Statutes, section 260C.515, subdivision 3, consents for children under the guardianship of the Commissioner of Human Services shall:

(1) be on a form prescribed by the Commissioner of Human Services;

(2) be executed before two competent witnesses;

(3) be confirmed by the consenting parent before the court or executed before the court;

(4) include notice that the consent is irrevocable upon acceptance by the court and shall result in an order that the child is under the guardianship of the Commissioner of Human Services; unless

(a) fraud is established and an order is issued permitting revocation for fraud pursuant to Minnesota Statutes, sections 260C.515, subdivision 3(2)(i), and 259.24; or

(b) the matter is governed by the Indian Child Welfare Act, 25 U.S.C., section 1913(c).

Subd. 2. Consents Taken Outside of Minnesota. A consent executed and acknowledged outside of Minnesota, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Subd. 3. Exceptions to Consent Requirements. The requirements of subdivision 1 do not apply to:

(a) consents to adoption given by:

(1) the Commissioner of Human Services, when required by Minnesota Statutes, section 259.24, subdivision 2;

(2) a licensed child-placing agency;

(3) an adult adoptee;

(4) the child's parent in a petition for adoption by a stepparent; or

(5) a parent or legal guardian when executed, together with a waiver of notice of hearing, before a judicial officer;

(b) a Minnesota Fathers' Adoption Registry consent to adoption; or

(c) consent to the adoption of an Indian child.

(Amended effective July 1, 2014.)

33.04 Timing of Consent

A consent to adoption form shall not be signed sooner than seventy-two (72) hours after the birth of a child. The seventy-two (72) hours is computed excluding the date of the birth and including Saturdays, Sundays, and legal holidays. A consent to adoption shall be executed by any person whose consent is required under Rule 33 within sixty (60) days after the child's placement in a prospective adoptive home.

(Amended effective January 1, 2007.)

33.05 Failure to Execute Consent

With the exception of cases where a person receives notice under Minnesota Statutes, section 259.24, subdivision 2a, if a biological parent whose consent is required under Rule 33 does not execute a consent by the end of the period specified in Rule 33.04, the child-placing agency shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social services agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in Minnesota Statutes, section 260C.301, subdivision 2. The court may disregard the six-month and twelve-month requirements of Minnesota Statutes, section 260C.301, in finding abandonment if the biological parent has failed to execute a consent within the time required under Rule 33.04 and has made no effort to obtain custody of the child.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

33.06 Agreement Conferring Authority to Place for Adoption

Subdivision 1. Parties to Agreement. The parents and legal custodian or legal guardian, if there be one, of a child may enter into a written agreement with the Commissioner of Human Services or an agency giving the Commissioner or such agency authority to place the child for adoption. If an unmarried parent is under eighteen (18) years of age, the written consent of the parents and legal custodian or legal guardian, if any, of the minor parent also shall be required. If either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in Minnesota Statutes, section 259.24, subdivision 1, the written consent of the legal custodian or legal guardian shall be required.

Subd. 2. Format of Agreement. The agreement and consent shall be in the form prescribed by the Commissioner of Human Services and shall contain notice to the parent of the substance of Minnesota Statutes, section 259.59, subdivision 2a, providing for the right to revoke the agreement.

Subd. 3. Content of Agreement. The agreement and consent shall contain the following written notice in all capital letters at least one-eighth inch high: "This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Subd. 4. Execution of Agreement. The agreement shall be executed by the Commissioner of Human Services or agency, or one of their authorized agents, and all other necessary parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child. If, after the execution of an agreement and consent under this rule, the child is diagnosed with a medical or psychological condition that may present a substantial barrier to adoption, the child-placing agency shall make reasonable efforts to give notice of this fact to a party to the agreement and consent. If a child is not adopted within two (2) years after an agreement and consent are executed under this rule, the agency that executed the agreement shall so notify a parent who was a party to the agreement and request the parent to take custody of the child or to file a petition for termination of parental rights. This notice shall be provided to the parent in a personal and confidential manner. A parent who has executed an agreement under this rule shall, upon request to the agency, be informed of whether the child has been adopted.

33.07 Consent to a Direct Placement Adoption Under Minnesota Statutes, Section 259.47

Subdivision 1. Presence of Legal Counsel for Biological Parent. If a biological parent has chosen to have legal counsel pursuant to Rule 23.04, the attorney shall be present at the execution of any consent. If a biological parent waives counsel, the parent's written waiver shall be filed with the consent to the adoption.

Subd. 2. Execution of Consent Before Judicial Officer - When Required. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has chosen not to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, shall appear before a judicial officer at a consent hearing as described in subdivision 4 to execute consent to the adoption.

Subd. 3. Execution of Consent Before Judicial Officer - When Optional. A biological parent whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, and who has received counseling through a licensed agency or a licensed social services professional trained in adoption issues, or any other parent or legal guardian whose consent to a direct placement adoption is required under Minnesota Statutes, section 259.24, subdivision 2, may choose to execute consent to the adoption under the procedures set forth in Minnesota Statutes, section 259.24, subdivision 5, and Rule 33.03, subdivision 1, or at a consent hearing as described in subdivision 4.

Subd. 4. Consent Hearing. Notwithstanding where the prospective adoptive parent resides, a consent hearing may be held in any county in this state where the biological parent is found. If the consent hearing is held in a county other than where the prospective adoptive parent resides, the court shall forward the executed consent to the district court in the county where the prospective adoptive parent resides.

Subd. 5. Consent Format. The written consent form to be used in a direct placement adoption under this rule shall be on a form prepared by the Commissioner of Human Services and made available to agencies and court administrators for public distribution. The form shall state:

(a) the biological parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the biological parent knowingly waived the opportunity;

(b) the biological parent has been notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

(c) the biological parent has been informed that if the biological parent withdraws consent, the prospective adoptive parent cannot require the biological parent to reimburse any costs the prospective adoptive parent has incurred in connection with the adoption, including payments made to or on behalf of the biological parent.

(Amended effective January 1, 2007.)

33.08 Revocation of Consent to Adoption of a Non-Indian Child Under Minnesota Statutes, Section 259.24

A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged or pursuant to the law of the state where the consent is executed. Written notification of withdrawal of consent shall be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that the consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the biological parents over the adoptive parents. Failure to comply with the terms of a communication or contact agreement order entered by the court under Rule 34 is not grounds for revocation of a written consent to an adoption after that consent has become irrevocable.

(Amended effective January 1, 2007.)

33.09 Consent to Adoption of an Indian Child

Subdivision 1. Requirements of Consent. If the child to be adopted is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

(a) executed in writing;

(b) recorded before the judge; and

(c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

Subd. 2. Revocation of Consent to Adoption of an Indian Child. In any voluntary proceeding for adoptive placement of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an adoption decree and the child shall be returned to the parent.

Subd. 3. Vacation of an Adoption Decree of an Indian Child. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall

vacate such decree and return the child to the parent. No adoption of an Indian child which has been effective for at least two (2) years may be invalidated under the Indian Child Welfare Act, 25 U.S.C., section 1913, unless otherwise permitted under state law.

(Amended effective January 1, 2007.)

2004 Advisory Committee Comment

Rule 33.09 mirrors the provisions of the Indian Child Welfare Act, 25 U.S.C., section 1913. The Guidelines of the Bureau of Indian Affairs provide additional guidance as follows:

"A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption by filing an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of court where the withdrawal of consent is filed shall promptly notify the party or agency by or through whom the adoptive placement has been arranged of such filing and that party or agency shall insure the return of the child to the parent as soon as practicable." The Commentary to the guideline further provides that "This provision recommends that the clerk of court be responsible for notifying the family with whom the child has been placed that consent has been withdrawn. The court's involvement frequently may be necessary [because] the biological parents are often not told who the adoptive parents are."

Bureau of Indian Affairs Guidelines for State Courts - Indian Child Custody Proceedings, Section E.4 and Commentary (emphasis included in original).

Rule 34. Communication or Contact Agreement

34.01 Persons Who May Enter Into a Communication or Contact Agreement

Subdivision 1. Parties to Agreement for Child under Guardianship of the Commissioner of Human Services. A communication or contact agreement for children under the guardianship of the Commissioner of Human Services under Minnesota Statutes, section 260C.619, shall be in writing and may be entered into between the following persons:

(a) an adopting parent and a birth parent;

(b) an adopting parent and any relative, including a sibling, or foster parent with whom the child resided before being adopted; or

(c) an adopting parent and any adult sibling of the child or the parent or legal custodian of a sibling of the child, if the child is a minor.

Subd. 2. Parties to Agreement for a Child Not under Guardianship of the Commissioner of Human Services. If the child is not under the guardianship of the commissioner, the adoptive parents and a birth relative or foster parents may enter into an agreement regarding communication with or contact between an adopted minor, adoptive parents, and a birth relative or foster parents pursuant to Minnesota Statutes, sections 259.58 and 260C.619. An agreement may be entered between:

(a) adoptive parents and a birth parent;

(b) adoptive parents and any other birth relative or foster parents with whom the child resided before being adopted; or

(c) adoptive parents and any other birth relative if the child is adopted by a birth relative upon the death of both birth parents.

Subd. 3. Approval. The court shall not issue a communication or contact order unless the agreement has been approved as follows:

(a) The responsible social services agency, the prospective adoptive parents or adoptive parents, and any birth parent, birth relative, foster parent, adult sibling, or legal custodian of the child's siblings who desire to be a party to the agreement shall approve, in writing, any agreement involving a child under the guardianship of the commissioner of human services.

(b) A child-placing agency shall approve, in writing, any agreement involving a child under its legal custody or guardianship.

(c) A biological parent shall approve in writing an agreement between an adopting parent and any other birth relative or foster parent, unless an action has been filed against the biological parent by a county under Minnesota Statutes, chapter 260C.

An agreement under this subdivision need not disclose the identity of the parties to be legally enforceable, and when the identity of the parties to the agreement is not disclosed, data about the identities in the adoption file shall remain confidential.

(Amended effective July 1, 2014.)

2004 Advisory Committee Comment

For siblings who grow up in foster care under the guardianship of the Commissioner of Human Services, a communication or contact agreement may be one way to ensure the children are able to maintain their sibling relationship.

34.02 Filing of Agreement

The signed communication or contact agreement shall be filed with the court after the petition has been filed and prior to finalization of the adoption.

34.03 Written Order Required

A communication or contact agreement is not legally enforceable unless the terms of the agreement are contained in a written court order entered pursuant to these rules, which shall be separate from the findings of fact, conclusions of law, order for judgment, and adoption decree issued pursuant to Rule 45. The order shall be filed in the adoption file and shall be issued before or at the time of the granting of the decree of adoption. For children under guardianship of the Commissioner of Human Services, when there is a written communication or contact agreement between prospective adoptive parents and birth relatives other than birth parents it must be included in the final adoption decree unless all the parties to the communication or contact agreement agree to omit it. If the adoptive parents or birth relatives do not comply with the communication or contact agreement, the court shall determine the terms of the communication and contact agreement.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

34.04 Timing

A communication or contact agreement order shall be issued by the court within thirty (30) days of being submitted to the court or by the date the adoption decree is issued, whichever is earlier.

(Amended effective August 1, 2009; amended effective July 1, 2014.)

34.05 Requirements for Entry of Order

A communication or contact agreement order under this rule need not disclose the identity of the parties. The court shall not enter an order unless the court finds that the communication or contact between the child, the adoptive parent, and a birth relative as agreed upon and contained in the proposed order is in the child's best interests.

34.06 Service of Order

The court administrator shall serve a certified copy of the communication or contact agreement order upon the parties to the agreement or their legal representatives by U.S. mail at the addresses provided by the parties to the agreement.

(Amended effective July 1, 2014; amended effective July 1, 2015.)

34.07 Enforcement

Subdivision 1. Filing Requirement. A communication or contact agreement order entered under this rule may be enforced by filing with the family court, or, for children under the guardianship of the Commissioner of Human Services, with the juvenile court pursuant to subdivision 3:

(a) a petition or motion;

(b) a certified copy of the communication or contact agreement order; and

(c) an affidavit that the parties have mediated or attempted to mediate any dispute under the agreement or that the parties agree to a proposed modification.

Subd. 2. Attorney's Fees. The prevailing party upon a motion to enforce a communication or contact agreement order may be awarded reasonable attorney's fees and costs.

Subd. 3. Child Under Guardianship of Commissioner of Human Services. An order regarding a communication or contact agreement entered pursuant to this rule and Minnesota Statutes, section 260C.619, for a child under the guardianship of the Commissioner of Human Services shall be enforced by filing a motion in the existing adoption file with the court that entered the contact agreement. Any party to the communication or contact order or the child who is the subject of the order has standing to file the motion to enforce the order.

(Amended effective July 1, 2014.)

34.08 Failure to Comply with Order

Failure to comply with the terms of a communication or contact agreement order is not grounds for:

(a) setting aside an adoption decree; or

(b) revocation of a written consent to an adoption after that consent has become irrevocable.

34.09 Modification

The court shall not modify a communication or contact agreement order unless it finds that the modification is necessary to serve the best interests of the child, and:

(a) the modification is agreed to by the parties to the agreement; or

(b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

Rule 35. Petition

35.01 Who May Petition; Residency of Petitioner

Subdivision 1. Who May Petition.

(a) **Generally.** The adopting parent may petition for adoption of the child.

(b) **Child Under Guardianship of Commissioner of Human Services.** The responsible social services agency may petition for the adopting parent to adopt a child who is under the guardianship of the Commissioner of Human Services. The petition shall contain or have attached a statement certified by the adopting parent that the adopting parent desires that the relationship of parent and child be established between the adopting parent and the child and that adoption is in the best interests of the child. An adopting parent must be at least 21 years of age at the time the adoption petition is filed unless the adopting parent is an individual related to the child as defined under Rule 2.01.

Subd. 2. Residency Requirement.

(a) **Child Not Under Guardianship of the Commissioner of Human Services.** Any person who has resided in the state for one (1) year or more may petition to adopt.

(b) **Child Under Guardianship of the Commissioner of Human Services.** An adopting parent for a child under state guardianship may reside within or outside the state of Minnesota.

Subd. 3. Exception to Residency Requirement. The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interests of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(19), or as a member of a child's extended family or important friend with whom the child has resided or had significant contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

(Amended effective July 1, 2014.)

35.02 Residency of Child to be Adopted

Unless waived by the court, no petition shall be granted until the child has lived three (3) months in the proposed home, subject to a right of visitation by the Commissioner of Human Services or an agency or their authorized representatives. If the three-month residency requirement is waived by the court, at least ten (10) days' notice of the hearing shall be provided by certified U.S. mail to the local social services agency.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

35.03 Timing

Subdivision 1. Child Not under Guardianship of Commissioner of Human Services. An adoption petition shall be filed not later than twelve (12) months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child or, in a direct placement adoption, the agency that is supervising the placement, shall file with the court in the county where the prospective adoptive parent resides, a motion for an order and a report recommending one of the following:

(a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes, section 259.22, subdivision 4;

(b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(c) that the child be removed from the prospective adoptive home.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) **Petition Filed Within Nine (9) Months of Adoption Placement Agreement.** An adoption petition shall be filed not later than nine (9) months after the date of the fully executed adoption placement agreement unless the court orders that:

(1) the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C., section 672; or

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home.

(b) **Petition Not Filed Within Nine (9) Months of Adoption Placement Agreement.** If an adoption petition is not filed within nine (9) months of the execution of the adoption placement agreement, and after giving the adopting parent written notice of its request together with the date and time of the hearing set to consider its report, the responsible social services agency shall file a report requesting an order for one of the following:

(1) extending the time for filing a petition because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C., section 673;

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, extending the time for filing a petition long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(3) removing the child from the adopting home.

At the conclusion of the review, the court shall issue findings and appropriate orders for the parties to take action or steps required to advance the case toward a finalized adoption, and shall set the date and time for the next review hearing.

Subd. 3. Exceptions - Stepparent and Relative Adoptions. The timing specified in subdivision 1 does not apply to stepparent adoptions or adoptions under Minnesota Statutes, section 259.47, by an individual related to the child not involving a placement as defined in Rule 2.01(19).

(Amended effective January 1, 2007; amended effective July 1, 2014.)

35.04 Conditions for Filing Petition for Adoption of a Child; Exceptions

Subdivision 1. Generally. No petition for adoption of a child may be filed unless the adoptive placement of the child was made by:

(a) the responsible social services agency as agent of the Commissioner of Human Services; or

(b) a child-placing agency as defined in Rule 2.01(10).

Subd. 2. Exceptions. The requirements of subdivision 1 shall not apply if:

(a) the child is over fourteen (14) years of age;

(b) the petitioner is an individual who is related to the child as defined in Rule 2.01(19);

(c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;

(d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or

(e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 29.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

2014 Advisory Committee Comment

Agency placement cannot be waived for children under the guardianship of the Commissioner of Human Services. Under Minnesota Statutes, section 260C.613, the responsible social services agency has exclusive authority to make an adoptive placement. An adoptive placement is made through a fully executed adoption placement agreement between the adopting parent, the responsible social services agency, and the commissioner. The agency's adoptive placement can be challenged in a motion under Minnesota Statutes, section 260C.607, subdivision 6, and if the prevailing party is not the adopting parent party to the adoption placement agreement, the court may order the agency to make the adoptive placement in the home of the prevailing party.

35.05 Content

Subdivision 1. Case Caption.

(a) **Generally.** In all adoption proceedings, except as otherwise stated in this subdivision, the case caption shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (child's birth name)." In proceedings commenced before the birth of the child being adopted, the case caption shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (unborn child of _____)."

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be captioned in the legal name of the child as that name is reflected on the child's birth record prior to adoption and shall be entitled "Petition to Adopt Child under the Guardianship of the Commissioner of Human Services." The actual name of the child shall be supplied to the court by the responsible social services agency if unknown to the individual with whom the agency has made the adoptive placement.

Subd. 2. Allegations. An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:

(a) the full name, age, and place of residence of the adopting parent, except as provided in Rule 7;

(b) if married, the date and place of marriage of the adopting parents, and the name of any parent who will retain legal rights;

(c) the date the petitioner acquired physical custody of the child and from what person or agency or, in the case of a stepparent adoption or adoption by an individual related to the child as defined in Rule 2.01(19), the date the petitioner began residing with the child;

(d) the date of birth of the child, if known, and the county, state, and country where born;

(e) the name of the child's parents, if known, and the legal custodian or legal guardian if there be one;

(f) the actual name of the child, if known, and any known aliases;

(g) the name to be given the child, if a change of name is desired;

(h) the description and value of any real or personal property owned by the child;

(i) the relationship of the adopting parent to the child, if any;

(j) whether the Indian Child Welfare Act does or does not apply;

(k) the name and address of the parties identified in Rule 20;

(l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and

(m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

Subd. 3. Exception to Content. In agency placements, the information required in subdivision 2(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the agency responsible for the child's adoptive placement. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

Subd. 4. Attachments. The following shall be filed with the petition:

(a) the adoption study report required under Rule 37 and Minnesota Statutes, section 259.41;

(b) any biological parent social and medical history required under Minnesota Statutes, sections 259.43 and 260C.609, except if the petitioner is the child's stepparent;

(c) the request, if any, under Rule 38.04 to waive the post-placement assessment report and background check;

(d) in the case of a child under the guardianship of the Commissioner of Human Services, a document prepared by the petitioner that establishes who must be given notice of the proceeding under Minnesota Statutes, section 260C.627, subdivision 1, that includes the names and mailing addresses of those to be served by the court administrator;

(e) proof of service, except in the case of a petition for a child under the guardianship of the Commissioner of Human Services under Minnesota Statutes, section 260C.623; and

(f) in the case of a child under the guardianship of the Commissioner of Human Services, the adoption placement agreement required under Minnesota Statutes, section 260C.613, subdivision 1.

Subd. 5. Other Documents to be Filed. The petitioner, or the responsible social services agency in the case of a child under the guardianship of the Commissioner of Human Services, shall file the following documents prior to finalization of the adoption:

(a) a certified copy of the child's birth record;

(b) a certified copy of the findings and order for termination of parental rights, if any, or an order accepting the parent's consent to adoption and for guardianship to the Commissioner of Human Services under Minnesota Statutes, section 260C.515, subdivision 3;

(c) a copy of the communication or contact agreement, if any;

(d) certification that the Minnesota Fathers' Adoption Registry has been searched as required under Rule 32;

(e) the original of each consent to adoption required under Rule 33, if any, unless the original was filed in the permanency proceeding conducted under Minnesota Statutes, section 260C.515, subdivision 3, and the order filed under clause (b) has a copy of the consent attached; and

(f) the post-placement assessment report required under Rule 38.

Subd. 6. Missing Information. If any information required by subdivision 2 or 3 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 7. Acceptance Despite Missing Information. The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivisions 2 and 3. The presiding judge shall determine whether the petition complies with the requirements of these rules.

(Amended effective January 1, 2007; amended effective July 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

35.06 Verification; Signatures

(a) **Generally.** The petition shall be signed and dated by the petitioner and verified upon information and belief.

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be verified as required under Minnesota Statutes, section 260C.141, subdivision 4, and, if filed by the responsible social services agency, shall be approved and signed by the county attorney. If a petition is for adoption by a married person, both spouses must sign the petition indicating willingness to adopt the child and the petition must ask for adoption by both spouses unless the court approves adoption by only one spouse when spouses do not reside together or for other good cause shown. If the petition is for adoption by a person residing outside the state, the adoptive placement must have been approved by the state where the person is a resident through the Interstate Compact on the Placement of Children, Minnesota Statutes, section 260.851.

(Amended effective July 1, 2014.)

35.07 Amendment

Subdivision 1. Uncontested Petitions. An adoption petition may be amended at any time prior to the conclusion of the final hearing pursuant to Rule 41.

Subd. 2. Contested Petitions.

(a) **Prior to Trial.** An adoption petition may be amended at any time prior to the commencement of a trial pursuant to Rule 44. The petitioner shall provide notice of the amendment

to all parties at least seven (7) days prior to the commencement of the trial. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

(b) **After Trial Begins.** The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

(Amended effective January 1, 2007.)

35.08 Statement of Expenses

Upon the filing of an adoption petition, the agency shall file with the court a statement of expenses that have been paid or are to be paid by the prospective adoptive parent in connection with the adoption. In a direct placement adoption, the statement of expenses shall be filed by the prospective adoptive parent.

(Amended effective January 1, 2007.)

Rule 36. Actions Upon Filing of Petition

Upon the filing of an adoption petition, the court administrator shall immediately provide a copy of the petition to:

(a) the Commissioner of Human Services; and

(b) if the petition relates to a child, the agency identified below:

(1) in an agency or a direct placement adoption, the court shall provide the petition to the agency supervising the placement; and

(2) in all other instances not described in clause (1), the court shall provide the petition to the local social services agency of the county in which the prospective adoptive parent lives if the child is to be adopted by an individual who is related to the child as defined in Rule 2.01(19).

(Amended effective January 1, 2007; amended effective July 1, 2014.)

Rule 37. Adoption Study and Background Study

37.01 Adoption Study and Background Study Required; Exception

An approved adoption study, completed background study as required under Minnesota Statutes, section 245C.33, and written adoption study report must be completed before the child is placed in a prospective adoptive home, except as allowed by Minnesota Statutes, section 259.47, subdivision 6. An approved adoption study, which includes the background study, shall be completed by a licensed child-placing agency and must be thorough and comprehensive. The study shall be paid for by the prospective adoptive parent, except as otherwise required under Minnesota Statutes, section 259.67 or 259.73. A placement for adoption with an individual who is related to the child, as defined by Minnesota Statutes, section 245A.02, subdivision 13, is not subject to this rule except as required by Minnesota Statutes, sections 245C.33 and 259.53, subdivision 2, paragraph (c). In the case of a licensed foster parent seeking to adopt a child who is in the foster parent's care, any portions of the foster care licensing process that duplicate requirements of the adoption study may be submitted in satisfaction of the relevant requirements of this rule.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

37.02 Adoption Study Report

The adoption study is the basis for completion of a written report which must be in a format specified by the Commissioner of Human Services. An adoption study report must include at least one in-home visit with each prospective adoptive parent. At a minimum, the report must document the following information about each prospective adoptive parent:

(a) a background study pursuant to Minnesota Statutes, sections 259.41, subdivision 3, and 245C.33, including:

(i) an assessment of the data and information required in Minnesota Statutes, section 245C.33, subdivision 4, to determine if the prospective adoptive parent and any other person over the age of 13 living in the home has a felony conviction consistent with subdivision 3 and section 471(a)(2) of the Social Security Act; and

(ii) an assessment of the effect of any conviction or finding of substantiated maltreatment on the capacity of the prospective adoptive parent to safely care for and parent a child;

(b) an assessment of medical and social history;

(c) an assessment of current health;

(d) an assessment of potential parenting skills;

(e) an assessment of ability to provide adequate financial support for a child;

(f) an assessment of the level of knowledge and awareness of adoption issues, including, where appropriate, matters relating to interracial, cross-cultural, and special needs adoptions; and

(g) recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(Amended effective August 1, 2009.)

37.03 Direct Placement Adoption; Background Study Incomplete

Unless otherwise ordered by the court, in a direct placement adoption the child may be placed in the preadoptive home prior to completion of the background study if each prospective adopting parent has completed and filed with the court an affidavit stating whether the affiant or any person residing in the household has been convicted of a crime. The affidavit shall also:

(a) state whether the adoptive parent or any other person residing in the household is the subject of an open investigation of, or has been the subject of a substantiated allegation of, child or vulnerable adult maltreatment within the past ten (10) years;

(b) include a complete description of the crime, open investigation, or substantiated allegation of child abuse or vulnerable adult maltreatment, and a complete description of any sentence, treatment, or disposition; and

(c) include the following statement: "Petitioner acknowledges that if, at any time before the adoption is final, a court receives evidence leading to a conclusion that a prospective adoptive parent knowingly gave false information in the affidavit, it shall be determined that the adoption of the child by the prospective adoptive parent is not in the best interests of the child."

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2015.)

37.04 Background Study; Timing

Subdivision 1. Timing of Background Study. The background study required in Rule 37.03 shall be completed before an adoption petition is filed.

Subd. 2. Direct Placement Adoption. In a direct placement adoption, if an adoption study report has been submitted to the court before the background study is complete, an updated adoption study report which includes the results of the background study shall be filed with the adoption petition.

Subd. 3. Agency Unable to Complete Background Study. In the event that an agency is unable to complete the background study, the agency shall submit with the adoption petition an affidavit documenting the agency's efforts to complete the background study.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

37.05 Updates to Adoption Study Report; Period of Validity

An adoption study report is valid if the report has been completed or updated within twelve (12) months of the adoptive placement.

37.06 Filing of Adoption Study Report

Subdivision 1. Agency Placement. The adoption study report shall be filed with the court at the time the adoption petition is filed.

Subd. 2. Direct Placement Adoption. The adoption study report shall be filed with the court pursuant to Rule 29 in support of a motion for a non-emergency preadoptive custody order or, if the study and report are complete, in support of an emergency preadoptive custody order.

(Amended effective January 1, 2007.)

37.07 Foster Parent Assessment May be Used for Adoption Study

A licensed foster parent seeking to adopt a child in the foster parent's care may submit any portion of the foster care licensing assessment that duplicates requirements of the adoption study report in satisfaction of the adoption study report requirements.

Rule 38. Post-Placement Assessment Report

38.01 Timing

Subdivision 1. Generally. Unless waived by the court pursuant to Rule 38.04 and Minnesota Statutes, section 259.53, subdivision 5, the supervising agency, or if there is no such agency the local social services agency, shall conduct a post-placement assessment and file a report with the court within ninety (90) days of receipt of a copy of the adoption petition. A post-placement assessment report is valid for twelve (12) months following its date of completion.

Subd. 2. Failure to Comply. If, through no fault of the petitioner, the agency fails to complete the assessment and file the report within ninety (90) days of the date it received a copy of the adoption petition, the court may hear the petition upon giving the agency five (5) days' notice of the time and place of the hearing.

(Amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

38.02 Content

The post-placement assessment report shall provide an individualized determination of the needs of the child and how the adoptive placement will serve the needs of the child. The report shall include a recommendation to the court as to whether the adoption petition should or should not be granted. In making evaluations and recommendations, the post-placement assessment report shall, at a minimum, address the following:

(1) the level of adaptation by the prospective adoptive parents to parenting the child;

(2) the health and well-being of the child in the prospective adoptive parent's home;

(3) the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community; and

(4) the level of inclusion of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives.

38.03 Background Study

If an adoption study is not required because the petitioner is an individual who is related to the child as defined in Rule 2.01(19), the agency, as part of its post-placement assessment report, shall conduct a background study meeting the requirements of Minnesota Statutes, section 259.41, subdivision 3, paragraph (b). An adoption study and background study are always required for a child under the guardianship of the Commissioner of Human Services.

(Amended effective August 1, 2009; amended effective July 1, 2014.)

38.04 Waiver by Court

Subdivision 1. Post-Placement Assessment Waiver Permitted. The post-placement assessment report may be waived by the court pursuant to Minnesota Statutes, section 259.53, subdivision 5, or 260C.607. A request to waive a post-placement assessment report shall be in writing and shall be filed and served with the petition pursuant to Rule 35.05. A request to waive a post-placement assessment report shall be decided by the court within fifteen (15) days of filing, unless a written objection to the waiver is filed, in which case a hearing must be conducted as soon as practicable.

Subd. 2. Background Study Waiver Prohibited. The court shall not waive the background study.

(Amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

38.05 Contested Adoptive Placement for Children Under Guardianship of the Commissioner of Human Services

The provisions of Rules 38.01 to 38.04 do not apply to children under the guardianship of the Commissioner of Human Services. Procedures for contested adoptive placements of children under the guardianship of the commissioner of human services are governed by Minnesota Statutes, section 260C.607, subdivision 6.

(Added effective July 1, 2014; amended effective September 1, 2019.)

2014 Advisory Committee Comment

Rule 38.05 provides that contests over the adoptive placement of children under state guardianship are governed by Minnesota Statutes, section 260C.607, subdivision 6. A contested

adoptive placement hearing for a child under guardianship of the commissioner of human services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion, which is heard by the judge conducting the reviews required under Minnesota Statutes, section 260C.607, on the agency's reasonable efforts to finalize adoption of the child.

If the court finds there is a prima facie showing, it will conduct further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under the guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by a fully executed adoptive placement agreement. So, the process is not for contested adoption but, rather, for contested adoptive placement.

Rule 39. Answer When Contested Adoption Matter

39.01 Answer When Contested

Within twenty (20) days after service of the adoption petition, or as soon thereafter as the party or agency becomes aware that the matter is contested, a Notice of Contested Adoption and, if appropriate, a competing adoption petition, shall be filed by:

(a) any party or agency opposing the adoption;

(b) any party or agency with knowledge of two or more adoption petitions regarding the same child; or

(c) the Commissioner of Human Services or responsible social services agency if consent to adopt is being withheld from the petitioner.

(Amended effective January 1, 2007.)

39.02 Notice of Contested Adoption

Subdivision 1. Content. A Notice of Contested Adoption shall:

(a) set forth the allegations upon which the adoption is being contested; and

(b) be signed by the party or by an agent of the agency opposing the adoption.

Subd. 2. Service. The Notice of Contested Adoption shall be served upon all parties in the same fashion as other motions are served under these Rules.

(Amended effective January 1, 2007.)

39.03 Pretrial Conference

The court shall schedule a pretrial conference within fifteen (15) days of the filing of a Notice of Contested Adoption and provide notice of hearing to the parties.

Rule 40. Voluntary Withdrawal; Involuntary Dismissal; Summary Judgment

40.01 Voluntary Withdrawal of Petition

A petition may be withdrawn or dismissed by a petitioner without order of the court by filing:

(a) at any time a notice of withdrawal along with proof of service upon all parties; or

(b) a stipulation of dismissal signed by all parties who have appeared in the matter.

(Amended effective January 1, 2007.)

40.02 Involuntary Dismissal of Petition

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, the court, upon its own initiative or upon motion of a party, may dismiss a petition or grant judgment on the pleadings. Grounds for such dismissal or judgment on the pleadings shall include, but not be limited to:

(a) failure to comply with these rules;

(b) failure to move forward on the petition;

(c) failure to state a claim upon which relief may be granted;

(d) lack of jurisdiction over the subject matter;

(e) lack of jurisdiction over the person;

(f) insufficiency of service of process; and

(g) failure to join a necessary party.

Furthermore, after a petitioner has completed the presentation of evidence, any other party to the proceeding, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that based upon the facts and the law, the petitioner has shown no right to relief.

(Amended effective January 1, 2007.)

40.03 Summary Judgment

Pursuant to the timing, notice, and format requirements of Minn. R. Civ. P. 7, a party may move with or without supporting affidavits for summary judgment. Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that a moving party is entitled to judgment as a matter of law.

Rule 41. Final Hearing in Uncontested Matters

41.01 Generally

A final hearing is a hearing to determine whether an uncontested adoption petition should be granted.

41.02 Commencement

A final hearing relating to an uncontested adoption petition shall be held not sooner than ninety (90) days after the child is placed, unless there is a waiver of the residency requirement pursuant to Rule 35, but not later than ninety (90) days after the adoption petition is filed. If the petitioner has not requested a hearing date within sixty (60) days of the filing of the petition, the court administrator may schedule a hearing and serve notice of such hearing pursuant to Rule 31.04.

(Amended effective January 1, 2007.)

41.03 Hearing Procedure

At the beginning of the final hearing, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption is required or whose parental rights will need to be terminated is present;

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice; and

(f) determine whether the Interstate Compact on the Placement of Children, Minnesota Statutes, section 260.851, applies.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

41.04 Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C. section 1901, et seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

41.05 Timing of Decision

Within fifteen (15) days of the conclusion of the final hearing in an uncontested adoption, the court shall issue findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45. For good cause, the court may extend this period for an additional fifteen (15) days.

(Amended effective January 1, 2007.)

Rule 42. Consolidation; Bifurcation

42.01 Consolidation Generally

When matters involving the adoption of the same child or children are pending before the court, the court may:

(a) order a joint hearing or trial of any or all the adoption matters;

(b) order consolidation of all such adoption matters;

(c) order that the matters be heard sequentially; and

(d) make any orders appropriate to avoid unnecessary delay or costs.

42.02 Consolidation with Other Proceedings; Competing Petitions

Subdivision 1. Consolidation with Other Proceedings. Upon notice of motion and motion and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding, including a custody proceeding, paternity proceeding, termination of parental rights proceeding, or other proceeding regarding the same child.

Subd. 2. Competing Petition. When multiple adoption petitions have been filed with respect to the same child who is under the guardianship of the Commissioner of Human Services, the court shall consolidate the matters for trial. In all other cases, when two or more parties have petitioned for the adoption of the same child, the court may, after consideration of the factors specified in subdivision 4, order the petitions to be tried together.

Subd. 3. Cross-County Matters. Upon motion for a change of venue and for good cause shown, the court may order the consolidation of the adoption matter with any related proceeding in another county regarding the same child.

Subd. 4. Factors to Consider. In making the determinations required under subdivisions 1 to 3, the court shall consider the best interests of the child, any potential breaches of confidentiality of the adoption matter, the additional complexity or judicial economies of a joint proceeding, and any other relevant factors.

2004 Advisory Committee Comment

In determining whether to consolidate an adoption matter and termination of parental rights proceeding, the court shall consider the impact of the consolidation on the eligibility of the child for financial adoption assistance or other financial benefits available under Minnesota Statutes, section 259.67.

42.03 Bifurcation

Subdivision 1. Permissive Bifurcation. The court may order a trial pursuant to Rule 44 to be bifurcated as to one or more claims or issues.

Subd. 2. Mandatory Bifurcation. In cases where the child is under the guardianship of the Commissioner of Human Services, the court shall bifurcate the trial on the contested adoption petitions as follows:

(a) A trial shall first be held to determine whether the consent to the adoption by the Commissioner of Human Services was unreasonably withheld from the petitioner. The responsible social services agency shall proceed first with evidence about the reason for the withholding of consent. The petitioner who has not obtained consent shall then have the burden of showing by a preponderance of the evidence that the consent was unreasonably withheld.

(b) If the court determines that the consent of the Commissioner of Human Services was not unreasonably withheld, the court shall dismiss the adoption petition of the petitioner who did not obtain consent, and proceed to trial on the remaining adoption petitions, if any.

(c) If the court determines that the consent of the Commissioner of Human Services was unreasonably withheld from any petitioner, the court shall not dismiss that petition for lack of consent. The court shall proceed to trial on all the contested adoption petitions, and shall determine whether adoption is in the best interests of the child, and, if so, adoption by whom.

(Amended effective January 1, 2007.)

42.04 Rule Does Not Apply to Children under Guardianship of the Commissioner of Human Services

The provisions of Rules 42.01 to 42.03 do not apply to children under the guardianship of the Commissioner of Human Services. Procedures for contested adoptive placement of children under

the guardianship of the Commissioner of Human Services are governed by Minnesota Statutes, section 260C.607, subdivision 6.

(Added effective July 1, 2014; amended effective September 1, 2019.)

2014 Advisory Committee Comment

Rule 42.04 provides that contests over the adoptive placement of children under state guardianship are governed by Minnesota Statutes, section 260C.607, subdivision 6. A contested adoptive placement hearing for a child under the guardianship of the Commissioner of Human Services occurs when an individual not selected by the agency for adoptive placement and who has an adoptive home study makes a prima facie showing that the responsible social services agency was unreasonable in making the adoptive placement. The individual files a motion which is heard by the judge conducting the reviews required under Minnesota Statutes, section 260C.607, on the agency's reasonable efforts to finalize adoption of the child.

If the court finds there is a prima facie showing, it will conduct a further hearing on the motion and may order the agency to make an adoptive placement with the individual bringing the motion. A petition for adoption of a child under guardianship of the commissioner cannot be filed unless there is an adoptive placement by the responsible agency made by fully executed adoptive placement agreement. So the process is not for contested adoption, but rather for contested adoptive placement.

Rule 43. Pretrial Conference in Contested Matters

43.01 Timing

The court may convene a pretrial conference sua sponte or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial.

43.02 Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) determine whether all parties who seek legal representation have obtained legal representation and determine that attorneys of record have filed certificates of representation with the court;

(d) identify any unresolved discovery matters;

(e) resolve any pending pretrial motions;

(f) determine the order in which evidence will be presented pursuant to Rule 45;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) any stipulations to foundation and relevance of documents; and

(3) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) set a deadline for the exchange of exhibits prior to trial and determine how exhibits shall be marked prior to the start of trial;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

(Amended effective January 1, 2007.)

43.03 Pretrial Order

Within fifteen (15) days of the pretrial conference, the court shall issue a pretrial order which shall specify all determinations required by this rule. From the date of the pretrial conference to the commencement of the trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

(Amended effective August 1, 2009.)

Rule 44. Trial in Contested Matters

44.01 Generally

A trial is a hearing to determine whether an adoption petition should be granted.

44.02 Commencement

A trial on a contested adoption petition shall commence within ninety (90) days of the filing of the petition or notice of a contested hearing, whichever is later. The trial shall be completed within thirty (30) days of commencement. Either or both deadlines may be extended for up to an additional thirty (30) days upon a showing of good cause and a finding by the court that the extension is in the best interests of the child.

(Amended effective January 1, 2007.)

44.03 Trial Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial, the court shall on the record:

(a) verify the name, age, and current address of the child who is the subject of the proceeding, except as provided in Rule 20.03;

(b) determine whether the Indian child's tribe has been notified, if the child has been determined to be an Indian child;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any necessary biological parent, guardian, or other person from whom consent to the adoption or whose parental rights will need to be terminated is present; and

(e) determine whether notice requirements have been met, and, if not, whether the affected person waives notice.

Subd. 2. Order of Evidence. That trial shall proceed as follows:

(a) The parties, in the order determined by the court at the pretrial conference, may make an opening statement or may make a statement immediately before offering evidence on their own petition and the statement shall be confined to the facts expected to be proved.

(b) The parties, in the order determined by the court at the pretrial conference, may offer evidence.

(c) The parties, in the order determined by the court at the pretrial conference, may offer evidence in rebuttal.

(d) When evidence is presented, the parties may, in the order determined by the court at the pretrial conference, cross-examine the witnesses.

(e) At the conclusion of the evidence, the parties may make closing statements in the reverse order in which they presented their evidence.

(f) If a written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

44.04 Standard of Proof

The petitioner shall prove by a preponderance of evidence the facts alleged in the adoption petition and that the adoption is in the best interests of the child.

2004 Advisory Committee Comment

The Indian Child Welfare Act, 25 U.S.C., section 1901, et seq., does not state a standard of proof for adoption matters as it does for foster care and termination of parental rights matters.

44.05 Motion for Judgment at Conclusion of Trial

A motion for a judgment may be made at the close of the evidence offered by an opponent or at the close of all evidence. A party who moves for judgment at the close of the evidence offered by an opponent shall, after denial of the motion, have the right to offer evidence as if the motion had not been made. A motion for a judgment shall state the specific grounds therefore.

44.06 Timing of Decision; Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial in a contested matter, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree pursuant to Rule 45. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. For good cause, the court may extend this period for an additional fifteen (15) days. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired.

Subd. 2. Delay of Issuance of Order if Adoption Assistance Not Yet Acted Upon. For adoption matters involving a child who is a ward of the Commissioner of Human Services, if there has been no opportunity for the adopting parent to apply for adoption assistance, the court shall delay issuing its findings of fact, conclusions of law, order for judgment, and adoption decree pursuant to Rule 45 until such time as the responsible social services agency documents for the court that either the commissioner has acted upon an adoption assistance application made on behalf of the adopting parent and child or the adopting parent has declined in writing to apply for adoption assistance. "Acted upon" means the commissioner or commissioner's delegate has signed an adoption assistance agreement or denied adoption assistance eligibility pursuant to a completed application submitted to the Department of Human Services. Nothing in this rule grants jurisdiction over the commissioner in regard to procedures or substantive decisions regarding the award or denial of adoption assistance.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

2008 Advisory Committee Comment

Rule 44.06, subdivision 2, requires the court to delay issuing its order after a final hearing or trial on an adoption matter relating to a child who is a state ward if the adopting parent has not had the opportunity to apply for adoption assistance or if the responsible agency has not documented in writing signed by the adopting parent that the adopting parent was advised of the opportunity to apply for adoption assistance and has declined adoption assistance. The reason for requiring the delay is because there may not have been an adoption assistance application by, or agency discussion of the opportunity to apply for adoption assistance with, the adopting parent when two or more competing adoption petitions regarding the same child are heard and the Commissioner of Human Services has given consent to the adoption, as required under Minnesota Statutes, section 259.24, subdivision 1, paragraph (d), by a different prospective adoptive petitioner than the adopting parent whose petition the court is granting. There may be an adoption assistance agreement for the parent to whom the Commissioner gave consent, but no application may have been made in regard to the competing petitioner. The court is required to delay issuing the adoption decree to give the responsible social services agency time to discuss the opportunity to apply for adoption assistance on behalf of the child with family whose petition the court is granting and for the commissioner to act on any application that is made. This will mean more certain eligibility for adoption assistance and timely start of adoption assistance payments after the decree is issued, if the child and adoptive parent are determined eligible.

Rule 45. Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

45.01 Dismissal and Denial of Adoption Petition

If the court finds that the consent of the adult person to be adopted is not valid, the court shall deny the petition. The court may dismiss an adoption petition if appropriate legal grounds have not been proved. In the case of a child under the guardianship of the Commissioner of Human Services, the court shall dismiss the petition if the petitioner is not a party to a fully executed adoption placement agreement. If the court is not satisfied that the proposed adoption is in the best interests of the child, the court shall deny the petition and:

(a) order that the child be returned to the custody of the person or agency legally vested with permanent custody; or

(b) in the case of a child under the guardianship of the Commissioner of Human Services, order the responsible social services agency to take appropriate action for the protection and safety of the child and notify the court responsible for conducting review hearings under Minnesota Statutes, section 260C.607, which shall set a hearing within thirty (30) days of receiving notice of the denial of the petition; or

(c) order the case transferred for appropriate action and disposition by the court having jurisdiction to determine the custody and guardianship of the child.

(Amended effective July 1, 2014.)

45.02 Granting Adoption Petition

If the court finds that it is in the best interests of the child that the petition be granted, the court shall issue findings of fact, conclusions of law, an order for judgment, and an adoption decree that the person shall be the child of the adopting parent. If the person being adopted is an adult, the court shall grant an adoption decree if the court finds that the person's consent is valid. Once the court issues an adoption decree, the court shall also direct the court administrator to complete the appropriate forms so that a new birth record may be issued and notify the prevailing petitioner and

his or her attorney of the determination, and provide them with an opportunity to obtain a certified copy of the adoption decree and new birth record prior to the closing of the file.

(Amended effective July 1, 2014.)

45.03 Findings of Fact, Conclusions of Law, Order for Judgment, and Adoption Decree

Subdivision 1. Separate Orders For Each Child. Although multiple children may be listed in an adoption petition, for each such child the court shall issue a separate findings of fact, conclusions of law, order for judgment, and adoption decree.

Subd. 2. Findings of Fact in a Contested Adoption Matter. In its decision in a contested adoption matter, the court shall make findings about:

(a) the petitioner's full name and date of birth;

(b) the petitioner's marital status;

(c) whether petitioner has resided in Minnesota for at least one (1) year prior to filing the adoption petition or whether the residency requirement has been waived pursuant to Rule 35.01;

(d) the date petitioner acquired physical custody of the child and from whom;

(e) the type of placement, including whether it is an agency placement, a direct preadoptive placement, a relative placement, or some other type of placement;

(f) whether three (3) months have passed since the date petitioner acquired physical custody of the child or whether the residency requirement has been waived pursuant to Rule 35.02;

(g) the child's date of birth and the child's city, county, state, and country of birth;

(h) whether a certified copy of the birth record of the child or of the adult to be adopted has been filed with the court;

(i) whether the post-placement assessment report required under Rule 38 and the adoption study report required under Rule 37 have been filed with the court;

(j) whether the child owns property and, if so, a list of such property;

(k) whether all consents required under Rule 33 have been properly executed and filed with the court or whether orders for termination of parental rights have been entered;

(l) whether all notices required under Rule 31 have been properly served and proof of service has been filed with the court;

(m) whether, if applicable, a communication or contact agreement pursuant to Rule 34 has been properly executed and filed with the court and whether the court finds that the communication or contact agreement is in the best interests of the child;

(n) whether a statement of expenses paid by the petitioner has been filed with the court pursuant to Rule 35.08 and whether the expenses are approved;

(o) whether a search of the Minnesota Fathers' Adoption Registry has been conducted and the results have been filed with the court pursuant to Rule 32; and

(p) whether the social and medical history form has been completed by the biological mother and biological father and has been filed with the court.

Subd. 3. Findings of Fact in an Uncontested Adoption Matter. In its decision in an uncontested adoption matter, the court:

(a) shall include findings about the issues identified in subdivision 2(a), (b), (c), (d), (g), (j), and (m); and

(b) may include findings about the issues identified in subdivision 2(e), (f), (h), (i), (k), (l), (n), (o), and (p).

Subd. 4. Conclusions of Law. In its decision, the court shall make conclusions of law about whether all of the allegations contained in the adoption petition have been proved in accordance with the applicable standard of proof and whether the adoption is in the child's best interests.

Subd. 5. Order for Judgment. If the court decides to grant the adoption petition, in its decision the court shall include an order stating:

(a) the child's new name;

(b) that the child is the child of the petitioner; and

(c) that an adoption decree shall be issued.

Subd. 6. Adoption Decree. If the court decides to grant the adoption petition, in its decision the court shall order that the child is the child of the petitioner and of any parent retaining parental rights.

(Amended effective January 1, 2007.)

45.04 Filing and Service

The findings of fact, conclusions of law, order for judgment, and adoption decree shall be filed and served pursuant to Rule 10.03, subdivision 2. If the adoptee is an Indian child, the court administrator shall provide the Secretary of the Interior with a copy of the adoption decree, along with such other information as may be necessary to show the following:

(a) the child's name and tribal affiliation;

(b) the names and addresses of the child's biological parents;

(c) the names and addresses of the child's adoptive parents; and

(d) the identity of any agency having files or information relating to such adoptive placement.

Rule 46. Post-Trial Motions

46.01 Motion for Amended Findings

Upon motion of a party served and heard not later than the time allowed for a motion for a new trial pursuant to Rule 46.02, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. The question of the sufficiency of the evidence to support the findings may be raised on appeal regardless of whether the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(Amended effective January 1, 2007.)

46.02 Motion for New Trial

Subdivision 1. Grounds. A motion for a new trial may be granted to any or all of the parties on all or part of the issues for any of the following causes:

(a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;

(b) misconduct of the prevailing party;

(c) accident or surprise which could not have been prevented by ordinary prudence;

(d) material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;

(e) errors of law occurring at the trial, and objected to at the time, or, if no objection need have been made pursuant to these rules, plainly assigned in the notice of motion;

(f) the decision is not justified by the evidence or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed on appeal to have been made on the ground that the decision was not justified by the evidence; or

(g) in the interest of justice.

Upon a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct entry of a new judgment.

Subd. 2. Basis of Motion. A motion for a new trial shall be made pursuant to Rule 15 and shall be made based upon on the files, exhibits, and minutes of the court. Pertinent facts that would not be a part of the minutes by be shown by affidavit. A full or partial transcript of the court reporter's notes may be used on the hearing of the motion.

Subd. 3. Time for Serving and Filing Motion. A notice of motion and motion for a new trial shall be served and filed within fifteen (15) days after service of notice by the court administrator of the filing of the decision or order pursuant to Rule 10. The motion shall be heard within thirty (30) days after such notice of filing.

Subd. 4. Time for Serving and Filing Affidavits. When a motion for a new trial is based upon affidavits, they shall be served and filed with the notice of motion. The opposing party shall have ten (10) days after such service in which to serve and file opposing affidavits, which period may be extended by the court for good cause. The court may permit reply affidavits.

Subd. 5. Order for New Trial on Court's Initiative. Not later then fifteen (15) days after a general verdict or the filing of the decision or order, the court upon its own initiative may order a new trial for any reason for which it might have granted a new trial on a motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. The court shall specify in the order the grounds therefore.

46.03 Timing of Decision

Within fifteen (15) days of the conclusion of the hearing on the motion the court shall issue its decision and order. For good cause shown, the court may extend this period for an additional fifteen (15) days.

Rule 47. Relief From Order

47.01 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

47.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the filing of the court's order.

47.03 Invalidation of District Court Action - Indian Child Cases

Subdivision 1. Petition. Any Indian child who is the subject of an adoption proceeding under State law, parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may file with any court of competent jurisdiction a petition to invalidate such action upon a showing that such action violates any provisions of the Indian Child Welfare Act, 25 U.S.C., section 1911, 1912, or 1913.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to invalidate, the court shall schedule an evidentiary hearing. The form and content of the petition to invalidate shall be governed by Rule 15.

Subd. 3. Findings and Order. Within fifteen (15) days of the conclusion of the evidentiary hearing the court shall issue a written order which shall include findings of fact and conclusions of law.

(Amended effective January 1, 2007; amended effective August 1, 2009.)

47.04 Vacation of Adoption Decree - Indian Child Cases

Subdivision 1. Petition to Vacate. After the entry of an adoption decree of an Indian child in any State court, the parent may withdraw consent upon the grounds that the consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two (2) years may be invalidated under the provisions of this rule unless otherwise permitted under State law.

Subd. 2. Evidentiary Hearing. Upon the filing of a petition to vacate, the court shall schedule an evidentiary hearing. The form and content of the petition to vacate shall be governed by Rule 15.

Subd. 3. Findings and Order. At the conclusion of the evidentiary hearing the court shall issue a written order which shall include findings of fact and conclusions of law.

Rule 48. Appeal

48.01 Applicability of Rules of Civil Appellate Procedure

Except as provided in this rule, appeals of adoption matters shall be in accordance with the Minnesota Rules of Civil Appellate Procedure.

48.02 Procedure

Subdivision 1. Appealable Order. An appeal may be taken by an aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 46, or for relief under Rule 47 if the motion is filed within the time specified in Rule 46.02, subdivision 3, the provisions of Minn. R. Civ. App. P. 104.01 subds 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon all parties or their counsel if represented, including notice of the correct case caption pursuant to Minn. R. Juv. Prot. P. 8.08; and

(b) file with the clerk of appellate courts a notice of appeal, together with proof of service upon all parties, including notice of the correct case caption as required under Minn. R. Juv. Prot. P. 8.08.

Subd. 4. Notice to Court Administrator. At the same time as the appeal is filed the appellant shall provide notice of the appeal to the court administrator. Failure to notify the court administrator does not deprive the Court of Appeals of jurisdiction.

Subd. 5. Failure to File Proof of Service. Failure to file proof of service does not deprive the Court of Appeals of jurisdiction over the appeal, but is grounds only for such action as the Court of Appeals deems appropriate, including a dismissal of the appeal.

Subd. 6. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the Court of Appeals.

(Amended effective January 1, 200)

2004 Advisory Committee Comment - 2006 Amendment

Minnesota Statutes, section 259.63, provides that adoption appeals are taken "as in other civil cases" under the Rules of Civil Appellate Procedure. The Committee recognizes that the timing provision of Rule 48.02, subdivision 2, is a departure from the Minnesota Rules of Civil Appellate Procedure in that under these Rules the appeal period now starts to run for all parties from the service of the Notice of Filing of Order by the court administrator rather than from the service of

notice of filing by a party. In addition, the time for appeal is decreased to 30 days, consistent with the child's need for timely permanency. This departure is intended to expedite the appellate process, which the Committee deems to be in the best interests of the child. The appeal time and procedures are governed by these rules, specifically established for adoption proceedings, and not by the more general provisions of the appellate rules. See In Re Welfare of J.R., Jr., 655 N.W.2d 1 (Minn. 2003).

48.03 Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

48.04 Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

48.05 Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Minn. R. Civ. App. P. 110.02, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

48.06 Time for Rendering Decisions

All decisions regarding adoption matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Minnesota Rules of Civil Appellate Procedure.

Rule 49. Venue

49.01 Venue

Subdivision 1. Generally. Except as provided in subdivision 2, venue for an adoption proceeding shall be the county of the petitioner's residence.

Subd. 2. Child under Guardianship of Commissioner. Venue for the adoption of a child committed to the guardianship of the Commissioner of Human Services shall be the county with jurisdiction in the matter according to Minnesota Statutes, section 260C.317, subdivision 3.

(Added effective January 1, 2007.)

49.02 Request to Transfer Venue

Upon the petitioner's motion served and filed pursuant to Rule 15, the court having jurisdiction over the matter under Minnesota Statutes, section 260C.317, subdivision 3, may transfer venue of an adoption proceeding involving a child under the guardianship of the Commissioner of Human Services to the county of the petitioner's residence upon determining that:

(a) the Commissioner of Human Services has given consent to the petitioner's adoption of the child or that consent is unreasonably withheld;

(b) there is no other adoption petition for the child that has been filed or is reasonably anticipated by the Commissioner of Human Services or the Commissioner's delegate to be filed; and

(c) transfer of venue is in the best interests of the child.

(Added effective January 1, 2007.)

49.03 Transfer of Venue Procedures

(a) Transfer of Venue. If the court grants a motion to transfer venue to another county, the court shall do so by ordering a continuance and providing all documents filed in the adoption proceeding to the other court through the court information system. The transferring court also shall provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case.

(b) Transfer of Jurisdiction. If the court grants a motion to transfer jurisdiction to another state or tribal court, the court shall do so by ordering a continuance and sending to the court administrator of the appropriate court a copy of all documents filed, together with a certification that all documents are true and accurate copies of the originals. In the alternative, all documents may be transferred to the receiving court electronically if the receiving court consents and both courts have the resources and technical capacity to accommodate the electronic transfer. The transferring court shall also provide copies of the order of transfer to the Commissioner of Human Services and any agency participating in the proceedings.

(Added effective January 1, 2007; amended effective July 1, 2015.)

Rule 50. Adoptive Placements - Indian Child

50.01 Placement Preferences

Subdivision 1. Generally. In any adoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

(a) a member of the Indian child's extended family;

(b) other members of the Indian child's tribe; or

(c) other Indian families.

Subd. 2. Preadoptive Placements.

An Indian child accepted for preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

(a) a member of the Indian child's extended family;

(b) a foster home licensed, approved, or specified by the Indian child's tribe;

(c) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(d) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(Added effective January 1, 2007.)

50.02 Tribal Resolution for Different Order of Preference; Personal Preference Considered; Anonymity in Application of Preferences

In the case of a placement under Rule 50.01, if the Indian child's tribe establishes a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in Rule 50.01, subdivision 2. Where appropriate, the preference of the Indian child or parent shall be considered, provided that where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(Added effective January 1, 2007.)

50.03 Social and Cultural Standards Applicable

The standards to be applied in meeting the preference requirements of Rule 50 shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(Added effective January 1, 2007.)

50.04 Record of Placement

A record of each placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary of the Interior or the Indian child's tribe.

(Added effective January 1, 2007.)