

**Rule 33. Petition****33.01 Drafting; Filing; Service**

**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 32.02. If the petition contains any confidential information or confidential documents as attachments that are inaccessible to the public under Rule 8.04 of these rules, the petitioner shall file the confidential information or confidential documents in the manner required under Rule 8.04, subdivision 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. 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. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event 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.

**Subd. 3. Termination of Parental Rights Matters.**

(a) **Drafting.** A termination of parental rights petition may be drafted and filed by the county attorney or any responsible person.

(b) **Filing and Service.** Any termination of parental rights petition shall be filed in a file separate from the child in need of protection or services file, if one exists. A petition shall be served pursuant to Rule 32.02.

(c) **Egregious Harm, Abandonment of an Infant, Previous Involuntary Termination of Parental Rights, or Previous Involuntary Transfer of Permanent Legal and Physical Custody Matters.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the responsible social services agency determining that a child:

(1) has been subjected to egregious harm as defined in Minnesota Statutes, section 260C.007, subdivision 14;

(2) is the sibling of another child who was subjected to egregious harm by the parent;

(3) is an abandoned infant as defined in Minnesota Statutes, section 260C.301, subdivision 2;

(4) is a child of a parent whose parental rights to another child have been involuntarily terminated; or

(5) is the child of a parent whose custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes, section 260C.515, subdivision 4, or similar law of another jurisdiction.

(d) **Joinder of Social Services Agency.** If the termination of parental rights petition has been filed by a party other than the responsible social services agency, that party shall join the responsible social services agency as a party pursuant to Rule 24.

(e) **Termination of Parental Rights or Other Permanency Petition.** The county attorney need not file a termination of parental rights petition if the county attorney files with the court:

(1) a petition for transfer of permanent legal and physical custody to a relative, including a determination that such transfer is in the best interests of the child; or

(2) a petition alleging the child and, where appropriate, the child's siblings to be in need of protection or services and such petition is accompanied by a case plan or out-of-home placement plan prepared by the responsible social services agency documenting a compelling reason why filing a termination of parental rights petition is not in the best interests of the child.

#### **Subd. 4. Permanent Placement Matters.**

(a) **Generally.** Any permanent placement petition required under Rule 42 shall be filed in a file separate from the child in need of protection or services file, if one exists.

(b) **Filing by Whom; Service.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. The county attorney 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 other parties. A petition shall be served pursuant to Rule 32.02.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

#### ***1999 Advisory Committee Comment***

*If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.*

#### **33.02 Content**

**Subdivision 1. Generally.** Every petition filed with the court in a juvenile protection matter, or an affidavit accompanying such petition, 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, race, dates of birth, residences, and post office addresses of the child's parents when known;

(d) the name, residence, and post office 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 post office address of the child's Indian custodian, if any, and the Indian custodian's tribal affiliation;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion 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 21, as well as a statement designating them as parties;

(i) the names and addresses of the participants identified in Rule 22, 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 subdivision 1 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. 2. Child in Need of Protection or Services Matters.**

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes, section 260C.007, subdivision 6. All child in need of protection or services petitions shall be drafted and filed under the supervision of the county attorney, except as provided in Minnesota Statutes, section 260C.141, subdivision 1, and subdivision 2(b) of this rule.

#### **(b) Petitions Drafted and Filed By Others.**

(1) **Petition Form.** A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the responsible social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the responsible social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the Commissioner of Human Services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 34 and shall direct notice pursuant to Rule 32. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

**(c) Petition Based Upon Prima Facie Case.**

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 28; or

(ii) before an emergency protective care hearing is held pursuant to Rule 30 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits, and may be supplemented by sworn testimony of witnesses taken before the court. If such testimony is taken, a note stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 11.

**Subd. 3. Termination of Parental Rights Matters.**

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes, section 260C.141.

**(b) Petitions Drafted and Filed by Others.**

(1) **Petition Form.** A termination of parental rights petition filed by an individual who is not a county attorney or responsible social services agency shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

**(2) Additional Content Requirements for Petitions Not Filed by County Attorney.**

In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall contain:

(i) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

(ii) a statement regarding the relationship of the petitioner to the child and to any other parties; and

(iii) a statement identifying any past or pending cases involving the child or family that is the subject of the petition.

**(3) Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the Commissioner of Human Services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition if incomplete.

**(c) Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, and any other party may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. 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(s) is sought for each child and why that option(s) is in the best interests 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. 4. Permanent Placement Matters.**

**(a) Captions and Title.** Every petition in a permanent placement matter, or an affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) 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.

(2) A request for permanent custody to the agency shall be entitled "Juvenile Protection Petition for Permanent Custody to the Agency."

(3) 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."

**(b) Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. Any permanent placement petition filed by a party who is not the county attorney or agent of the Commissioner of Human Services may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which 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(s) is sought for each child and why that option is in the best interests 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. If another party files a permanent placement petition in response to the county's petition, it must be filed and served at least fifteen (15) days prior to the date of trial.

**Subd. 5. Out of State Party.** If a party resides out of state, or if there is 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.101 to 518D.317.

**Subd. 6. 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 name or address may be provided to the court in a separate informational statement and shall not be accessible to the public, parties, or participants, but it shall be accessible to the attorneys and guardian ad litem. Upon notice and motion, the court may disclose the name or address to others as it deems appropriate.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

#### ***2008 Advisory Committee Comment***

*For a quote from the Indian Child Welfare Act (ICWA) that addresses "exclusive jurisdiction," see the 2008 Advisory Committee Comment following Rule 30.08.*

#### ***2014 Advisory Committee Comment***

*Under Rule 33.02, subdivision 1(k), if appropriate under the circumstances of the case, the petitioner shall give notice to the child's parents that a parentage matter may be brought and of the availability of parentage establishment and child support services through the county child support agency. This notice can help introduce parents to the benefits of establishing the legal parent and child relationship and of the benefits to the child of partnership on financial issues. Unless prohibited by federal law, the county child support agency has the obligation to bring an action to establish the parent and child relationship when a parent, including an alleged father, or the responsible social services agency who has legal responsibility for the placement of a child applies for full child support services, unless good cause is claimed and substantiated under Minnesota Statutes, section 256.741, subdivisions 5 to 13.*

### **33.03 Verification**

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

### **33.04 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. Upon receipt of approval from the court, the petitioner shall provide written or on-the-record notice of the proposed amendment to all parties and participants.

(Amended effective January 1, 2007.)

### **33.05 Timing of Filing of Petition**

**Subdivision 1. Child in Need of Protection or Services.** If a child is in emergency protective care pursuant to Rule 28, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 30.

**Subd. 2. Permanency or Termination of Parental Rights.** 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 eleven (11) months or in the expedited manner required in Minnesota Statutes, section 260C.503, subdivision 2, paragraph (a). A petition is not required if the responsible social services agency intends to recommend, at or prior to the time the court is required to hold the admit/deny hearing pursuant to Rule 34.02, that the child be returned to the care of the parent from whom the child was removed.

(Amended effective July 1, 2014.)

#### ***1999 Advisory Committee Comment***

*Minnesota Statutes, section 260C.143, provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.*