

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8046

OFFICE OF
APPELLATE COURTS

SEP 18 2013

FILED

PROMULGATION OF AMENDMENTS TO
SPECIAL RULES OF PROCEDURE GOVERNING
PROCEEDINGS UNDER THE MINNESOTA
COMMITMENT AND TREATMENT ACT

O R D E R

The 2013 Legislature promulgated amendments to Minn. Stat. ch. 253B (2012), and codified new provisions in Minn. Stat. ch. 253D (2013), both of which affect the Commitment and Treatment Act rules. *See* Act of May 9, 2013, ch. 49, 2013 Minn. Laws 210. Although the legislative amendments do not “change the application” of the rules for commitment proceedings, *id.*, § 20, 2013 Minn. Laws at 229, amending the rules to update statutory references is necessary.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act be, and the same are, prescribed and promulgated to be effective immediately.
2. The amendments shall apply to all proceedings pending or commenced on or after the effective date.

Dated: September 18, 2013

BY THE COURT:



Lorie S. Gildea
Chief Justice

**AMENDMENTS TO SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER
THE MINNESOTA COMMITMENT AND TREATMENT ACT**

[Note: New material is indicated by underscoring; deleted material is indicated by strikethrough]

**Special Rules of Procedure Governing Proceedings
Under the Minnesota Commitment and Treatment Acts
With amendments effective September 18, 2013**

Rule 1. General

(a) Scope. The Special Rules shall apply in proceedings under the 1997 Minnesota Commitment and Treatment Act, Minn. Stat. ch. 253B, including and its amendments, and Minn. Stat. ch. 253D, the Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities.

(b) Rules Superseded. The Special Rules shall supersede any other body of rules otherwise applicable (e.g., the Rules of Civil Procedure for the District Courts, Probate Court Rules, etc.) in conflict with these Special Rules.

(c) Citation. These Special Rules may be cited as Commitment and Treatment Act Rules.

Rule 2. Computation of Time

Except as provided by these Special Rules, the Minnesota Rules of Civil Procedure govern the computation of any time periods prescribed by Minn. Stat. ch. 253B or Minn. Stat. ch. 253D. If a respondent is represented by an attorney, whenever an act is required within a certain time after a written demand or service of a document upon a party or entity other than the court, time shall begin to run once both the party and the parties' attorneys have received notice of the document, regardless of the method of service, and shall not include weekends and holidays. The 72-hour absence that triggers the missing respondent procedures under Minn. Stat. § 253B.141, subd. 1, commences when the respondent was due to return to the facility and includes weekends and holidays.

* * *

Rule 6. Commencement

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D.

The petition should be filed in the county of financial responsibility as defined in Minn. Stat. § 253B.045, subd. 2. If the county of financial responsibility refuses to file a petition, the county where the respondent is present must file the petition if statutory conditions for commitment are present. Financial responsibility for the costs of the proceedings and treatment will be resolved by subsequent administrative process.

* * *

Rule 9. Appointment and Role of Counsel

Immediately upon the filing of a petition for commitment or early intervention the court shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D~~this chapter~~. The attorneys shall represent the respondent until the court dismisses the petition or the commitment and discharges the attorney.

The respondent may employ private counsel at the respondent's expense. If private counsel is employed, the court shall discharge the appointed counsel.

In order to withdraw, counsel must file a motion and obtain the court's approval.

Counsel for the respondent is not required to file an appeal or commence any proceeding under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D if, in the opinion of counsel, there is an insufficient basis for proceeding.

* * *

Rule 12. Examiner Reports

Each court-appointed examiner shall examine the respondent and prepare a separate report stating the examiner's opinion and the facts upon which the opinion is based. The report shall address:

(a) Whether the respondent is mentally ill, mentally retarded, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;

(b) Whether the examiner recommends commitment;

(c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication;

(d) The respondent's capacity to make decisions about neuroleptic medication, if needed; and

(e) If the petition alleges that the respondent is mentally ill and dangerous to the public, whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

(f) If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in ~~Minn. Stat. § 253B.02, subd. 18b and 18e~~ Minn. Stat. § 253D.02, subds. 11 and 12 respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall send a copy of the examiner's report to the petitioner's attorney, the respondent and respondent's attorney immediately upon receiving the report.

Rule 13. Medical Records.

The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties at least 24 hours in advance of the hearing which of the respondent's medical records the party intends to introduce at the hearing.

Rule 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting Evidence

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minn. Stat. §§ 595.02-595.08 (competency and privilege). Respondent's counsel will be physically present with the patient. The court shall insure that the respondent has adequate opportunity to speak

privately with counsel, including, where appropriate, suspension of the audio recording or allowing counsel to leave the conference table to communicate with the client in private.

Rule 15. Evidence

The Court may admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses.

Rule 16. Rights of Patients

In every order for commitment, the committing court shall order that the Rights of Patients, provided at Minn. Stat. § 253B.03, Minn. Stat. § 253D.17, and Minn. Stat. § 253D.18, be incorporated in the order by reference.

Rule 17. Petition to Determine Need for Continued Care

Upon the filing of a petition to determine the need for continued care pursuant to Minn. Stat. § 253B.17, the court shall cause the hearing to be held within 14 days of filing. The hearing may be continued for up to 30 days upon a showing of good cause. The court shall give the respondent, respondent's attorney, county attorney, guardian ad litem, and substitute decision maker, as well as such other interested persons as the court may direct, at least 10 days' notice of the date and time of the hearing.

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Rule 21. Public Access to Records

(a) Except as provided in these Special Rules, and as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, or release.

(b) The court administrator shall create a separate section or file in which the prepetition screening report, court appointed examiner's report, and all medical records shall be filed. Records in that section or file shall not be disclosed to the public except by express order of the district court. This provision shall not limit the parties' ability to mention the contents of the pre-petition screening report, court appointed examiner's report and medical records in the course of proceedings under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D.

* * *

Rule 23. Evaluation and Final Hearings in Cases Governed by Minn. Stat. §§ 253B.18, and ~~Minn. Stat. 253B.185~~, and Minn. Stat. ch. 253D

(a) For persons who have been committed as mentally ill and dangerous to the public, sexually dangerous persons, or as sexual psychopathic personalities, the head of treatment facility shall file the report required by Minn. Stat. § 253B.18. The evaluation may be conducted at a secure treatment facility or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

(b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality, the court shall hold a hearing. The head of the treatment facility shall file the report required by Minn. Stat. § 253B.18, subd. 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P. 20.01, subd. 4:

- (1) Discharge the respondent's commitment;
- (2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or
- (3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality.

(c) At the request of the respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minn. Stat. § 253B.18, subd. 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

- (1) the respondent's diagnosis;
- (2) the respondent's present condition and behavior;
- (3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;
- (4) a description of treatment efforts and response to treatment by the respondent during hospitalization;
- (5) the respondent's prognosis;
- (6) the respondent's individual treatment plan;
- (7) an opinion as to whether the respondent is in need of further care and treatment;

(8) an opinion as to the program or facility best able to provide further care and treatment, if needed;

(9) an opinion as to whether respondent is dangerous to the public or himself. All supportive data and documentation shall be attached to the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D continue to be met.

Rule 24. Expediting Transcripts for Chapter 253B or Chapter 253D Appeals

In addition to satisfying the requirements of the Rules of Civil Appellate Procedure, any party initiating an appeal of an order entered under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D shall, at or before the date of filing the notice of appeal, (a) serve on each court reporter who recorded the proceedings a copy of the notice of appeal and a request for transcripts the appellant deems necessary for the appeal and (b) file with the notice of appeal a copy of the request(s) for transcripts, along with an affidavit of service of the request(s) on opposing counsel, the court administrator of the court that issued the order appealed, and the court reporter or reporters, unless at the time of filing the notice of appeal all transcripts necessary for the appeal have already been transcribed. The transcript request(s) shall require completion of the transcripts no more than 25 days after the filing of the notice of appeal, unless the 25th day falls on a Saturday, Sunday or a holiday, in which case the transcripts shall be completed on the next business day. The Court of Appeals may modify the deadline for completion of the transcripts if necessary. Failure of an appellant who intends to order a transcript to serve on the court reporter(s) a request for transcripts the appellant deems necessary for the appeal at the date of filing the notice of appeal does not deprive the Court of Appeals of jurisdiction over the appeal, but extends the time for the Court of Appeals to hear the appeal by the period of delay between the filing of the appeal and service of the transcript request(s).

Rule 25. Subpoena for Production of Records

Where a party in a proceeding under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D uses a subpoena to obtain production of records, the advance-service and advance-notice requirements under Minn. R. Civ. P. 45.02(a) and 45.04(a)(5) shall be 24 hours, rather than seven days.