

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACTS

Wednesday, September 10, 2014
Minnesota Judicial Center Room 230

Members present:

Hon. Jamie Anderson, Chair

Hon. G. Barry Anderson, Liaison Justice

Robin Benson

Donald Betzold

Rita DeMeules

Jennifer Dunn-Foster

Matthew Frank

Hon. Stoney Hiljus

Andrea Martin for John Kirwin

Cindy Lehr

Ryan Magnus

Douglas McGuire

Katie Nolting

Joel Olson

James Snyder

James Zuleger

Deanna Dohrmann, Staff Attorney

Aaron Zurek, Staff Attorney

Guests present: Lisa Haas, Carla Heyl, Karen Mareck, Paul Regan

Welcome and Introductions. Committee chair Judge Jamie Anderson welcomed all members and guests, and all members introduced themselves. Judge Anderson thanked members for their service and explained that their service was generally *pro bono*. Members have been assigned to a three-year term. She noted that members would be expected to appear for meetings in-person

generally, but that a phone line could be provided if necessary. She noted that this was a public meeting.

Committee Charge. Liaison Justice G. Barry Anderson echoed Judge Anderson's appreciation for the time and service of the committee members and provided an overview of the Supreme Court's charge to the committee. The court has asked the committee to review and propose amendments to the Civil Commitment rules in order to implement the eCourtMN Steering Committee's recommendation to move forward with expansion of mandatory eFiling and eService and other issues that need attention. He noted that the committee serves as an advisor to the Supreme Court and that members are encouraged to broadly deliberate the issues. He stated rules amendments were due by the end of the year to the Supreme Court.

eFS Demonstration. Melissa Peterson, Hennepin County Court Administration, demonstrated the basic functionality of the E-Filing System ("eFS"), including the following: user registration, registration for eService, adding service contacts, the filing and service function, and post filing/service information. Members asked several questions about the functionality of the eFS system.

General Rule of Practice 14 and Civil Procedure Rule 5 Overview. Aaron Zurek, Staff Attorney, provided an overview of Rule 14 of the Minnesota General Rules of Practice and Rule 5 of the Civil Rules. Along with this Committee, six other rules committees are meeting to implement the Supreme Court's charge to amend the rules. The General Rules Committee had its first meeting on August 28. Rule 14 of the General rules is the eFS rule that has applied to the eCourtMN pilot counties. The General Rules Committee is amending Rule 14 to expand mandatory eFiling to all case types in the eCourtMN pilot counties beginning July 2015. Statewide mandatory eFiling is planned for July 2016. The General Rules Committee is also looking to amend Rule 14 to allow for voluntary eFiling for Self Represented Litigants and non-party participants.

The Civil Rules Committee will have their first meeting on September 12. There is a proposed amendment to Rule 5 of the Civil Rules that would require that after an initial petition is filed, all

subsequent documents must be filed using eFS. There is also a proposed amendment that would remove the option of filing by facsimile.

Electronic Transfer of Civil Commitment Medical Records Pilot Project. Deanna

Dohrmann, Staff Attorney, gave a brief overview of the pilot project for the transfer and storage of electronic medical records for civil commitment cases. The pilot is a joint effort by the 2nd and 4th Districts to allow for medical providers to transfer electronic medical records to a system where they will be viewed by attorneys, medical examiners, and Guardian ad Litem (hereinafter “EMRS”). This project applies to medical records viewed by the attorneys involved in the case, guardian ad litem, and the medical examiner, but does not apply to medical records that are filed with the court as exhibits. Currently, medical providers in the 2nd and 4th Districts send medical records in paper form by courier to the court, where they are stored in a locked room. This project will enhance that system with an electronic process.

Several committee members noted that the process for attorneys and medical examiners to access medical records is different outside of the metro area. Some courts in outstate counties do not receive medical records from medical providers. Instead, attorneys and medical examiners travel to the medical facilities and are granted access to view the records on site. In Washington county, medical records are sometimes provided on a CD. One member shared that the court does not issue orders directing records to be delivered to attorneys.

Draft Rule Amendments.

Next the committee reviewed and considered the proposed amendments to Rule 13. Proposed Rule 13.01 incorporates the current language of Rule 13 and proposed rules 13.02 – 13.04 provide a framework for the electronic transfer of medical records and incorporates case law language.

Rule 13 generally. A committee member requested that anywhere “medical examiners” are listed, that “retained experts” also be included.

A committee member requested that a definition for “medical records” be included in the rule.

Rule 13.04. Rule 13.04 relates to a Respondent's attorney having the ability to exclude certain medical records from the medical examiners review. A committee member noted that the proposed rule uses case law language, but was curious about how it would work. Many times, the medical examiner views the medical records before the attorneys do, or at the same time. Several members noted that attorneys rarely argue over what records the medical examiner should view, and in that rare case, a new examiner could be appointed.

There was discussion on whether there was any control over what hospitals / medical providers send and determined that typical requests will cover certain times frames, so the odds of getting records that would be out of scope / not relevant was most likely not an issue.

One member expressed that the rule needs to be clear that with judicial appeal panel proceedings, the medical records are not being deposited with the court, as the examiner goes to the hospital to review records or records are mailed to the examiner. Question was raised whether the rule should have language to this effect but was not resolved.

Rule 13.03(d). Rule 13.03(d) describes how long electronic medical records should be retained by the court after being received by a medical facility. A committee member commented on the proposed language regarding the time records would remain in the EMRS, as "until after the hearing" was too vague. The proposed language states that records would be accessible "until after the conclusion of the hearing or for a longer period as ordered by the court." Committee members suggested a variety of replacement language, including: "until 30 days after the closing of the case;" "30 days after appeals period has run;" "following resolution of the petition." One member suggested 44 days, as based on statutory requirements that a hearing be held within 14 days of filing the petition. Some members noted that medical providers would be more likely to provide documents electronically if the retention period were shorter and suggested the language: "30 days following receipt of the records." Committee members discussed the pros and cons of shorter versus longer time frames for making these records available, and it was noted that for HIPPA compliance, the shorter time records are held, the better. One member expressed that the EMRS will have an audit trail as to who accesses the system, but no guarantee that all records in the system were reviewed. It was also stated that the EMRS should have the functionality of an

automated purge. Regarding the proposed rule, the consensus was to strike “after the hearing” and replace with “for 30 days from electronic transmission” or something to that effect and to have an Advisory Committee comment that parties are to preserve their own record for appeal purposes and to not rely on the EMRS for the court record.

Rule 13.03(c). Rule 13.03(c) describes Attorney and Examiner access to electronic medical records. A member commented that the proposed amendment should include language that parties would receive an electronic notification when new medical records were available for viewing. More information on the project requirements of the EMRS is needed, as it was not certain if this functionality is in or out of scope for the EMRS design. Some members expressed that an opt in / opt out feature for receiving these notices would be preferred. It was discussed whether this should be in the rule at all, but possibly in some other documentation that describes the parameters of the system.

Members discussed whether a definitions section might be needed, as the term “medical records” may not adequately describe all other types of records that might be used in civil commitment cases, such as school records or treatment records. However, if only one term needed to be defined, it would not warrant a definitions section. Proposal was made to change “medical” to “health” as health records was the broader term.

A suggestion was made to remove “Attorney and Examiner” in the title of section 13.03(c) and to include language that appears in the current rule 13 that allows access to agents and experts retained by those authorized to have access to medical records.

Rule 13.02. A member requested that language be added to this rule to clarify that parties in non-pilot counties would only participate in using electronic medical records once the project was expanded to those counties.

Rule 13.01. Members discussed whether the requirement of providing 24 hours advance notice of which medical records would be introduced should be removed. While this requirement is in

the current version of the rules, it is not followed in practice, as medical records are often not available until just before a hearing.

Next the committee reviewed and considered the proposed amendments to the other Civil Commitment Rules.

Rule 3. A member proposed an amendment to change “the” to “a” manner. The other proposed changes were agreed upon by consensus.

Rule 8. Committee members agreed to the proposed changes.

Rule 12. A proposed amendment to Rule 12 replaces the word “send” with “provide” when describing how the court provides the medical examiner’s report to the parties. Members discussed whether a different verb should be used. After discussion, members agreed to use the language in Rule 8: “distributed or electronically transmitted through the E-Filing System.”

Rule 18. Members agreed to proposed changes.

Rule 21(a). Members agreed to the proposed changes and to remove the word “release” from the end of the rule.

Rule 21(b). A member suggested removing “court appointed” language from this rule. It was not clear if there was a consensus by the Committee to make this change.

Rules generally. Members agreed to employ the Oxford comma in the Rules.

Next Meeting. Judge Anderson thanked the members for their time and noted that the next meeting is on Thursday, September 25, 2014, at 2:00 P.M.

There being no further business, the meeting was adjourned.

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACTS

Thursday, September 25, 2014
Minnesota Judicial Center Room 230

Members present:

Hon. Jamie L. Anderson, Chair

Hon. G. Barry Anderson, Liaison Justice

Robin C. Benson

Donald Betzold

Jennifer Dunn-Foster

Matthew Frank

Andrea Martin for John L. Kirwin

Jennifer Thon for Ryan B. Magnus

Douglas F. McGuire

Katie Nolting

Joel C. Olson

James C. Snyder

James C. Zuleger

Rita Coyle DeMeules

Cindy Lehr

Deanna J. Dohrmann, Staff Attorney

Aaron Zurek, Staff Attorney

Guests present: Carla Heyl, Patrick Busch, Paul Regan

Call to Order and Recap. Committee Chair Judge Jamie Anderson welcomed all members and called the meeting to order. Judge Anderson introduced Lynae Olson, Civil Division Court Administrator for the Second Judicial District, who was present to give an overview of the proposed Pilot Project for the Electronic Transfer of Medical Records in the Second and Fourth Judicial Districts.

Pilot Project Overview. Lynae Olson provided an overview of the current procedure regarding the receipt and review of respondents' medical records by examiners and attorneys in the Second District. She explained that hospitals and other medical records providers generally maintain electronic records and that, when directed to provide records by the court, said providers print paper copies of the records and transfer them via courier to the court, where the records are placed in a secure area for examination by authorized individuals. Following review, the records are shredded and destroyed by court staff. A committee member commented that, in the Fourth District, medical records providers are directed to provide two paper copies of the records to the court so that one copy may be maintained by the court and another by counsel.

Ms. Olson explained that in early 2013, hospitals and medical records providers approached the court requesting an alternative to paper submission of records. The court, in turn, assembled a project team to examine the feasibility of creating an electronic transfer of medical records alternative. The project team conducted a broad analysis of the issues, interviewing stakeholders in Ramsey and Hennepin Counties including representatives from the Ramsey and Hennepin County Attorneys' Offices, the local defense bar, Regions Hospital, HCMC, HealthEast, and others with vested interests in an electronic transfer of medical records alternative. In June 2013, the project team presented its findings to the eCourtMN Steering Committee who approved moving forward with the development of a portal for the electronic transfer of medical records and subsequent rollout of a pilot project in the Second and Fourth Judicial Districts. The project team drafted/posted an RFP and finalized a vendor for the portal. The team is currently ironing out the details of the contract with the vendor, which is expected to be executed within days. Once the details are finalized, the supreme court is expected to issue an order authorizing the rollout of a pilot project in the Second and Fourth Districts by January 2015.

Under the pilot project, hospitals and other medical records providers' use of the electronic medical records system ("EMRS") will be voluntary, and use of the EMRS by attorneys and examiners for review of medical records will be mandatory. Records providers will have the option of registering with the system and transmitting records to the court electronically by uploading the records to the EMRS. Once the records are uploaded to the EMRS by the provider, the records would be remotely accessible for review or download by the attorneys, examiners, and other authorized individuals. The EMRS will be a secure system and HIPPA compliant, requiring all users to register for and provide a username and password prior to receiving access. As additional security, the system will maintain an audit trail of all activity by users. The system will have the capability of automatically purging uploaded records after a specified period of time. Although the primary focus of the pilot project will be to develop and test the electronic portal for the receipt and storage of medical records submitted for review by providers, an ancillary focus will be There was some discussion on whether there will be an ancillary focus to test the potential feasibility of using the EMRS as a means to file electronic exhibits to MNCIS. However, the chair quickly noted that exhibits are not filed in

MNCIS unless the record is being created for an appeal and the primary scope of this project is the portal aspect.

The pilot project is expected to rollout in January 2015 with the goal of submitting an initial report on the project to the supreme court in April 2015. If successful, the plan is to ultimately broaden access to the EMRS statewide.

Summary of access to medical records - statewide practices. Staff reported that she requested information from committee members regarding current county-specific practices / processes for how attorneys and examiners obtain access to medical records to assist the committee in determining whether rule changes are necessary to streamline a statewide process. At the September 10, 2014, meeting, several committee members noted that the process for accessing medical records differs from county-to-county. Some Courts in outstate Minnesota do not receive medical records from medical providers. Instead, attorneys and medical examiners travel to the medical facilities and are granted access to view the records on site.

Committee members from Kanabec, Washington, and Beltrami counties responded to staff's request for information and generally discouraged a mandated statewide practice at this time. The committee reached consensus that, prior to taking any action streamlining a statewide process in the rules, it would be helpful to review and consider feedback from the Second and Fourth Districts regarding the successes or failures of the pilot project. Hospitals and other records providers are already catering to differing procedures from county to county, so it will not be overly burdensome for providers to continue that process. A committee member commented that with the advent of the pilot project, hospitals may resist providing paper copies of records in counties outside the Second and Fourth Districts. It was noted that Hennepin and Ramsey counties represent a significant portion of the records requests statewide and that hospitals and records providers would likely be grateful for the opportunity to electronically submit the records in those counties with no adverse effect on paper submissions by hospitals in other counties.

Review of proposed rule amendments. The committee reviewed and considered the proposed amendments to the Civil Commitment Rules sequentially. Staff explained the formatting used to denote proposed changes by Staff and changes previously considered by the committee.

Rule 3: The proposed amendment to Rule 3 incorporates the words, "and Filing" into the title of the rule, adds reference to the general rules of practice, and specifically to General Practice rule 14. The committee agreed to this proposed change.

Rule 6: The proposed amendment to the rule includes reference to section 253D.07. The committee agreed to this proposed change.

Rule 12: A proposed amendment to Rule 12 replaces the term, “mentally retarded” with “developmentally disabled” to reflect contemporary language. The committee agreed to this proposed change.

Staff asked the committee to consider whether the formatting of Rule 12 should be modified to make paragraph (f) a standalone paragraph. The committee reached consensus that both paragraphs (e) and (f) should be standalone paragraphs and the word, “and,” should be included immediately following the semicolon in paragraph (c).

Rule 13: Staff proposed formatting changes to be consistent with other rules. A committee member commented that including paragraph lettering improves readability and assists attorneys and parties in accurately citing the rule. The committee reached consensus that the subparts of Rule 13 should include a title and be numbered (a), (b), (c), etc.

At the last meeting, a proposal was made to change “medical” records to “health” records. Instead, staff proposed defining “medical records” in the rule, as modeled from the definition in Chapter 144.

Rule 13 (a): The committee agreed that the proposed definition is broad enough to encompass psychological and other related records and alleviates concerns raised at the last meeting. The committee agreed that paragraph (a) should only include the definition of medical records, and the words, “pertain to,” should be replaced with “are,” and the remaining text becomes the new paragraph (b).

Another proposed change to Rule 13 (a) replaces “at least 24 hours” with “as soon as possible.” A committee member noted that the “24 hours” language is inconsistent with statutory language which requires disclosure at least “48 hours” in advance of the hearing but recognized that that the 48 hour timeline is often not realistic in practice. Another member commented that there is value in maintaining the 24 hour language as an aspirational goal and suggested that the rule be amended to read “at least 24 hours or as soon as possible.” Another member noted that the suggested language could be interpreted to mean “24 hours or sooner” and suggested that the “as soon as possible” language be adopted and the “24 hours” aspiration be included in an advisory committee comment to the rule. The committee reached consensus that the “as soon as possible” language be adopted and the “24 hours” aspiration be referenced in a comment to the rule.

Rule 13 (b): A committee member questioned whether the proposed rule, authorizing the electronic transfer of medical records, should reference the pilot project and the Second and Fourth Judicial Districts at all. The rules are intended to be permanent and the proposed language will quickly become outdated as the pilot project concludes. The committee

agreed Rule 13 (b) should be made broader and that all references to the pilot project and the Second and Fourth Judicial Districts be removed and placed in an advisory committee comment. One member suggested language for the rule: “As authorized by order of the Supreme Court, judicial districts may participate in the project.” Staff will draft the new language and present it to the committee for consideration at the next meeting.

Rule 13 (c) and (d): The committee proposed paragraph (c) be more generalized and agreed to the proposed amendments to Rule (d).

Rule 13 (e): A member noted that the first sentence of proposed Rule 13 (e) should be amended to read “Only ~~¶~~the county attorney, respondent’s attorney, guardian ad litem, ~~and~~ court-appointed examiners, and retained retained experts shall ~~only~~ have access to respondent’s medical records through the EMRS in those cases where health and medical providers electronically submit through the EMRS.” The committee agreed to the amended language proposed.

Rule 13 (g): A member questioned whether it was necessary to include proposed Rule 13 (g) and speculated that incorporating In re D.M.C. caselaw into the rule may draw attention to something that is not an issue in practice and create a new level of motion practice. Another member disagreed and noted that the proposed rule language will be helpful to practitioners. Another member suggested that the caselaw language be included in an advisory committee comment. After further discussion, the committee voted to omit paragraph (g) and reference the caselaw in an advisory committee comment. A proposal was made to re-phrase the draft advisory committee comment to simply use the name of the Supreme Court Order rather than naming the pilot project. Staff will draft proposed language and present it to the committee at the next meeting.

Rule 18: Staff proposed striking the term “recommitment” and replace it with the terminology in the statute of “continued commitment.” Members agreed that the term is not used in the statute, but the term “recommitment” is nomenclature and members discussed the differences between a “continued commitment” and a “recommitment” as it is referenced in both rules 18 and 19. The committee did not agree to the proposed change.

Rule 19: The committee reached consensus that Rule 19 should be amended as follows: “Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minn. Stat. § 253B.065, shall be treated as an initial commitment ~~petition and not a recommitment.~~” The committee concluded that it would be proper to note in a committee comment that the foregoing change is merely to clarify existing language used in practice and not a change in the law.

Rule 21: Staff opened discussion on this rule by referencing the standing orders in Hennepin and Ramsey counties that make all medical records received into evidence in civil commitment proceedings unavailable to the public. Justice Anderson shared with the committee that there is a bias to not have standing orders and a consistent policy stated in the rules would serve to clarify the issue for attorneys, parties, and court staff. A member questioned which committee should address this issue – this committee or the Rules of Public Access Advisory Committee. Justice Anderson stated the preference is to have the chairs and staff of both committees to conduct background research and discuss the matter at a staff level prior to considering the matter at the committee level. The Chair asked committee members to review the Hennepin and Ramsey standing orders and provide any feedback to Staff prior to the next meeting.

On a related issue, a member commented that it may be necessary to clarify the breadth of records covered under Rule 21. He noted that more than just medical records (e.g. school records, victim records, law enforcement records, etc.) are produced in civil commitment proceedings and that it may be beneficial to provide clarity in the rule. The Chair asked committee members to consider this issue prior to the next meeting as well.

Rule 23: Staff noted that section 253B.185, concerning sexually dangerous person (“SDP”) and sexual psychopathic personality (“SPP”) commitments, had recently been amended and renumbered to various sections in chapter 253D. The committee agreed that section 253B.185 should be removed from the title of the rule and to remove all reference to SDP and SPP commitments. The committee additionally requested that Staff draft a proposed advisory committee comment explaining the amendment, as persons committed prior to the legislative changes in 2011 still have a right to a hearing under prior law.

Next Meeting. Judge Anderson thanked the members for their time and efforts and noted that the next meeting will be on Thursday, October 9, 2014, at 1:30 P.M. She reiterated that committee members should review the Hennepin and Ramsey standing orders regarding public access to civil commitment records and be prepared to discuss potential amendment to Rule 21 at the next meeting.

There being no further business, the meeting was adjourned.

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACTS

Thursday, October 9, 2014
Minnesota Judicial Center Room 225

Members present:

Hon. Jamie L. Anderson, Chair

Hon. G. Barry Anderson, liaison justice

Robin C. Benson

Don R. Betzold

Rita Coyle DeMeules

Jennifer Dunn-Foster

Matthew G. Frank

Hon. Stoney Hiljus

John Kirwin

Cindy Lehr

Doug McGuire

Katie Nolting

Joel C. Olson

James C. Snyder

Jim C. Zuleger

Deanna J. Dohrmann, Staff Attorney

Aaron Zurek, Staff Attorney

Guests present: Rob Soderstrom; AnnMarie O'Neill; Hon. Karen Asphaug; Mike Johnson; Carla Heyl; and Patrick Busch.

Call to Order. The meeting was called to order. Staff introduced Hon. Karen Asphaug and Rob Soderstrom who were present to provide an overview of the Supreme Court Appeal Panel (“SCAP”) case filing/management procedure.

E-Appeal Presentation. Rob Soderstrom, Assistant Clerk of Appellate Courts, gave an overview of the public access classification of documents filed in SCAP proceedings. Hon. Karen Asphaug, Judge of District Court, noted that the SCAP has statewide jurisdiction to review petitions for reduction of custody matters and appeals of a revocation of provisional discharge pursuant to sections 253B.19 and 253D.27. Judge Asphaug provided a broad overview of the case handling and evidentiary hearing process in section 253B.19 and 253D.27 matters. Committee members asked several questions regarding the public access classification of documents submitted in SCAP proceedings. Confidential documents and medical records can be included in memorandum and are part of the record that is included to the panel, and the clerk must decide what to redact. Judge Asphaug noted that it would be helpful to the Clerk of Appellate Courts if the rules provided as much clarity as possible regarding the classification of documents across district court and SCAP proceedings.

Judge Asphaug noted that under the current process, exhibits introduced at the hearing before the panel are sealed if they are of treatment, medical related information, but if underlying criminal complaint is introduced, it is public. These proceedings appear to have similar concerns with the treatment of medical records introduced at the hearing, as these proceedings are public and it is anticipated that exhibits may be displayed electronically during the hearing and that the media may be present. The current process is very paper heavy. If asked, media would be allowed to look at exhibits but not make copies. Judge Asphaug has issued a specific order requesting briefs containing confidential information to be redacted for the public version, and protective orders are also issued. Judge Asphaug renewed her request that the rules provide clarity regarding the treatment of these exhibits used in SCAP proceedings.

Discussion Item: Public Access to Records. The Committee held a policy discussion on the topic of public access to medical records admitted in civil commitment proceedings. Committee Chair, Judge Anderson, noted that the discussion was tabled at the last meeting to allow for a dialogue between the chairs and staff of the Civil Commitment Rules Advisory Committee and the Rules of Public Access Advisory Committee. The Committee discussed and determined this was a policy issue rather than a legal issue and that the Supreme Court has the authority to dictate how it handles its records, not the Legislature.

Judge Anderson framed the issue as follows: *If civil commitment proceedings are open to the public like other civil and criminal proceedings, why should the records be treated any differently from those public proceedings?* The ensuing discussion was extensive. Among the points made were:

- Although any case type might have sensitive information, civil commitment proceedings are distinguished from ordinary civil contract and tort proceedings because the parties in those proceedings appear voluntarily and make a calculated decision to litigate their cases in a public forum. Similarly, in criminal proceedings, the defendant is alleged to have

committed a public offense and probable cause supports the allegation. But in civil commitment proceedings, respondents appear involuntarily and often lack the ability to appreciate the open nature of the proceedings and the collateral consequences associated with the publicity.

- Likening civil commitment proceedings to criminal proceedings is a bad comparison because criminal defendants have a constitutional right to a public trial and caselaw clearly supports a qualified right of access by the public in criminal proceedings.
- Civil commitment proceedings were made public to permit scrutiny in an area that received little to no public oversight in the 1960s and 70s. State institutions have been closed down and there may no longer be the need for public scrutiny. One member commented the pendulum which swung in support of full access four decades ago has swung in the other direction due to the creation of a pariah class of the unemployable and uprooted who lack the voice or capacity to protect themselves.
- Media and public scrutiny is an impediment to treatment and rehabilitation. It has a chilling effect on participation and disclosure in sex offender treatment. Some members suggested that the rules should provide a protective nature for individuals who are in need of treatment.
- Public access has turned high profile cases into a circus: Although a practitioner's immediate audience is the court, the "real audience" is the media. Oral arguments have become opportunities for press releases.
- Because of technology developments, there are little to no barriers to accessing court records. Once the records have been posted on the internet, they cannot be pulled back. Public is more public now than it was four decades ago. Records introduced in civil commitment proceedings contain highly personal information which does not belong on the internet.
- The Rules of Public Access Advisory Committee will consider whether the public should be granted remote access to various court records. Other court rules, such as the Juvenile Protection Rules, make a distinction between "public" and "remote" and provide that the public shall not be afforded "electronic" access to Juvenile Protection records. This Committee must consider whether the Civil Commitment Rules should make a similar distinction.
- Because the rules lack clarity, there are inconsistent practices across the state with regard to the closure of civil commitment hearings and public classification of records. Courts in smaller counties regularly close courtrooms without specific findings on the record. Other counties leave it to the respondent to decide who is permitted to attend the hearing.
- A member questioned the value granting public access to court judgments and findings but precluding access to all exhibits and testimony upon which judgments and findings are based. Aside from reviewing the evidence, the public has no other way of determining whether any given court decision is supported by the record. In opposition to this position, a member noted that a judge's decision is subject to appellate review. Records do become public when appealed, unless this Committee proposes a rule to say otherwise. One member

asked whether there is a distinction between media access to exhibits admitted into evidence and media access to court proceedings. Another member countered that the burden should be on the respondent to request protective orders regarding what exhibits are germane. Some Committee members acknowledge there is a balance between how much the media needs to know and public safety with privacy rights of medical records

- Should there be a distinction among MI, CD, DD, MID, SDP, and SPP cases, and should records be treated differently depending upon what type of commitment is sought? Is there an argument that MID, SDP, and SPP cases should be more public than the other commitment-types due to a heightened need for public safety? Should commitments involving minors be treated differently?

The Committee reached consensus on the following point: Medical records admitted into evidence in civil commitment proceedings should be classified as confidential and not accessible by the public, but that the information contained in medical records may be argued by the attorneys in oral argument or briefings and referenced by witnesses in testimony, and that said argument and testimony should be public.

The Rules of Public Access Committee meets on October 14, 2014. Justice Anderson and Staff will keep the Committee informed of the discussions in that meeting. In the interim, Committee Members are to discuss the underlying issues with their constituents, and the Committee will revisit the topic at the next meeting.

Review of proposed rule amendments. The committee reviewed and considered the proposed amendments to the Civil Commitment Rules.

Rule 13:

Rule 13 (a): The definition of “medical records” was made a standalone paragraph “(a)” in accordance with the Committee’s instructions at the last meeting. A member suggested that the definition should be modified slightly: The word, “information,” should be replaced with “records” to clarify that “medical records” are recorded material and not unrecorded information or thoughts. The Committee agreed to the suggested change.

Rule 13 (b): With the definition of “medical records” now a standalone paragraph (a), the remaining language of former paragraph (a) was re-lettered paragraph (b). The language was not otherwise changed. In addition, all other paragraphs were re-lettered sequentially. The Committee approved the re-lettering of the paragraphs.

Rule 13 (c): A member suggested that the last word in the paragraph at line 123, “system,” be replaced with “EMRS” to remove any ambiguity as to which system the rule refers. The Committee agreed to the suggested change.

Rule 13 (d): The prior draft rule was modified only slightly. The modifier, “district,” was added for clarity where reference made to the court order on line 126. A member commented that the EMRS pilot will not include SDP and SPP commitment proceedings and raised concern that the proposed language, “required by district court order to submit ... records to the court” might give the impression that the rule authorized providers to submit records through the EMRS in SDP and SPP cases. It was agreed that the proposed language would likely not cause such confusion because providers in SDP and SPP cases are ordered to submit the records to the state for review and not the court. However, the committee agreed that language excepting SDP and SPP cases from the EMRS should be included in a separate paragraph (h).

Another member commented that the language at line 128, “in the judicial districts *or portions thereof* authorized and designated to participate,” is inconsistent with the language in Rule 13 (c) at line 119. Staff explained that the language was inconsistent for a purpose, to give the State Court Administrator the authority to designate entire districts or portions of districts (county-by-county) should the pilot project be made permanent and rolled-out statewide. In the last sentence of the paragraph at line 133, a member suggested that the word, “*court* shall transmit notice,” be replaced with “*EMRS* shall transmit notice” to reflect that the EMRS system will automatically generate the receipt and not court staff. The Committee agreed to the suggested change.

Rule 13 (e): A member suggested that the word, “either,” be included immediately before “electronically” in line 136 for consistency with the permissive use of “may.” The Committee agreed to the suggested change.

Rule 13 (f) & (g): A member suggested that where “*their* retained experts” is used throughout Rule 13 (f) and (g), that “their” be eliminated to remove ambiguity as to whom “their” refers. The Committee agreed to the suggested change.

Rule 13 Advisory Committee Comments: The Committee approved the proposed comment with the following changes: : remove “have an opportunity to complete review of” on lines 181 – 182 and replace with “receive”; remove “right” on line 182 and replace with “immediately”; and remove “completing review of” and replace with “receiving.” The sentences will read as follows: “...attorneys and parties do not receive respondent’s medical records until immediately before the hearing. Accordingly, the disclosures should be made as soon as possible after receiving the records.”

Rule 12: A member suggested that the word, “also,” be included between “shall” and “address” in line 88. The Committee agreed to the suggested change.

Rule 19: A member suggested that line 229 be amended as follows: “... shall be treated as an petition for initial commitment” for clarity. The Committee agreed to the proposed change.

Rule 23: The Committee approved all proposed changes to Rule 23 with the following modification to the comment at lines 319-20: “intended to modify or limit the rights of respondents ~~appearing~~ committed under petitions filed prior to the statutory change May 28, 2011. See Minn. Laws 2011, ch. 102, art. 1, sec. 1-4.”

Staff introduced the following three topics currently being discussed by the General Rules Committee and asked that Committee members consider any impact on the civil commitment rules.

Minor Signatures. Staff reported that a proposal is being considered to treat minor names as restricted identifiers and that only the initials and year of birth should be referenced in documents filed with the court. This would be consistent with the Federal Rules of Civil Procedure 5.2. The Committee agreed this approach would be acceptable with civil commitment filings.

Electronic Signatures. Staff directed the Committee’s attention to Minn. Stat. § 253B.23, subd. 3a (b). The statute is more restrictive than the proposed general rule in that it requires a two-factor authentication standard for electronic signatures. A member noted that when the statute was written, the legislature had little to rely on, as the concept of electronic signatures was novel. Then, electronic signatures raised concerns of fraud and authenticity. Those concerns were speculative and have since subsided. The Committee approved the addition of a new rule adopting the Gen. R. Prac. 14.04 electronic signature standard as a way around the statute.

Proposed Orders. Staff introduced proposals currently under consideration by the General Rules of Practice Advisory Committee regarding the electronic filing and submission of proposed orders. Members indicated that judges routinely request proposed orders be sent to them via email in editable, Word format in addition to filing in PDF. Staff will keep the Committee updated on any proposals by the General Rules Committee.

Next Meeting. Judge Anderson thanked the members for their time and efforts and noted that the next meeting will be held on Thursday, November 6, 2014, at 1:30 P.M.

There being no further business, the meeting was adjourned.

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACTS

Thursday, November 6, 2014
Minnesota Judicial Center Room G-06

Members present:

Hon. Jamie L. Anderson, Chair

Hon. G. Barry Anderson, liaison justice

Robin C. Benson

Donald Betzold

Matthew G. Frank

John Kirwin

Cindy Lehr

Ryan B. Magnus

Douglas F. McGuire

Katie Nolting

Joel C. Olson

James C. Snyder

Deanna J. Dohrmann, Staff Attorney

Aaron Zurek, Staff Attorney

Guests present: Carla Heyl, Paul Regan, and Patrick Busch

Welcome and Call to Order. Chair Judge Jamie Anderson welcomed members and called the meeting to order.

Proposed Public Access Rules 1, 4, and 8. Staff reported that the Public Access Rules Committee met October 29, 2014, and discussed remote access to public case records. At that meeting, a motion was made to permit remote public access to public documents across all case types with the ability to search case records in juvenile (delinquency and protection), family, and pending conviction criminal cases, restricted to case number (i.e. searches by party/participant name would be restricted). The motion prevailed. The Public Access Committee's discussions on the topic are ongoing. The committee recognizes that to implement its policy decision certain documents in specific areas may need to be classified as confidential and that additional search restrictions in the

identified and other areas may be necessary. The committee desires feedback from other rules committees on this issue.

Staff introduced proposed Public Access Rules 1, 4 and 8. Proposed Public Access Rule 1 provides that “[t]o the extent that there is any conflict between these rules and other rules, these rules shall govern.” The proposed rule also prohibits the issuance of a local rule or standing order without Supreme Court approval. The rule is designed to centralize public access provisions so attorneys, parties and interested persons can look to the Public Access Rules as a roadmap for all public access related questions.

The proposed amendment to Public Access Rule 4, subd. 2 will prohibit courts from restricting access to case records globally via standing order and require case specific findings as a prerequisite to restricting access. Proposed Public Access Rule 4, subd. 4 clarifies that, merely because a rule or law precludes access to an entire document such as a report or medical record, a party shall not be precluded from referencing or mentioning the contents of such document in pleadings, argument or testimony in court. The proposed rule is consistent with Civil Commitment Rule 21 (b), which permits parties to mention the contents of confidential reports and medical records in civil commitment proceedings.

Public Access Rule 8 governs the inspection, copying, and remote access to court records. Staff called the committee’s attention to Rule 8, subd. 5 which provides that “[generally] documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.” Staff noted that pursuant to court policy, hearing and trial exhibits are not scanned or electronically accessible to the public; if a member of the public wishes to inspect an exhibit, he or she must come to the courthouse and request access to the actual exhibit.

Discussion Item: Public Access to Medical Records Admitted into Evidence. Committee Chair, Judge Anderson, noted that at the last meeting the Committee reached consensus on the following point:

Medical records admitted into evidence in civil commitment proceedings shall be classified as confidential and not accessible to the public.

Committee Members were asked to discuss the foregoing point with their constituents, and revisit the topic at this meeting. Judge Anderson noted that the agenda contained a list of guiding principles or questions which the committee would consider in turn.

I. *Should the public/confidential classification of medical records be different in voluntary vs. involuntary commitment proceedings?* Major points of the committee's discussion on this question included:

- Making medical records public in voluntary commitment cases merely because the respondent is voluntarily availing himself/herself to the court in a public proceeding may reduce the amount of voluntary commitments, which would have the effect of burdening the court and all parties involved.
- The treatment of records must be consistent across commitment type as there is no way to predict how an individual case will proceed.

CONSENSUS: It was the consensus of the committee to make no distinction in the treatment of medical records admitted into evidence in voluntary vs. involuntary commitments.

II. *Should commitments proceedings involving minors be treated differently?* The ensuing discussion was extensive. Among the points made were:

- There are very few minor commitments, so may not be a big issue but a significant issue.
- There is a disconnect in the treatment of juvenile records. Most juvenile delinquency records (except those involving a 16 year old charged with a felony) are confidential. However, after a Rule 20 finding of incompetency the ensuing civil commitment proceeding is public.
- Juvenile delinquency records are confidential and focus is on rehabilitating his/her criminal behavior. Juvenile protection proceedings are public and focus is on the parents and remedying parenting deficiencies. In civil commitment proceedings the focus is on the juvenile and in treating the juvenile's mental illness or chemical dependency issues. Civil commitment proceedings involving juveniles are more like juvenile delinquency proceedings than juvenile protection proceedings.
- Civil commitment proceedings often contain much more sensitive information and records than juvenile delinquency proceedings. There is a heightened demand for confidentiality in civil commitment proceedings. Making the information public may adversely affect treatment.
- A member noted that in her experience courts almost routinely issue protective orders in CHIPS matters making all records in the case confidential.
- The legislature has made a policy decision in D-16 and EJJ cases to make the records public on grounds that for more serious offenses the interests of public safety outweigh the child's privacy interest. Civil commitment proceedings arising out of Rule 20's in D-16 and EJJ cases should remain public.

- The documents admitted in juvenile delinquency and civil commitment proceedings are generally the same: IEPs, psychological and psycho-sexual evaluations, social worker reports, etc... The documents should receive the same classification in both case types.
- Confidentiality influences and provokes constructive participation in treatment.
- A juvenile respondent in a civil commitment proceeding is more like a victim than a defendant in a criminal or juvenile delinquency case. Victims receive stringent privacy protections under Minnesota law. Another member commented that this argument goes both ways as children in juvenile protection matters are victims too, and those matters are public.
- Although the parents are the general focus of CHIPS proceedings, the children involved in those cases are often very mentally ill and in some cases chemically dependent. Thus, a big portion of the CHIPS case is on treating the children. Another member reiterated that the entire structure of a CHIPS proceeding is to intervene and protect the child from neglect or harm caused by the parent(s). The children's issues are generally the product of parenting neglect and harmful mistreatment.

The Chair instructed committee members to think about this issue and discuss the issue with their constituents.

III. *Should the classification of medical records be different based on the type of civil commitment proceeding (i.e. MI, CD, DD, MI & D, SDP, and SPP)?* Major points of this discussion included:

- There is a basis for making a distinction between MI & D, SDP, and SPP, and all other civil commitment proceedings on public safety grounds.
- Making such a distinction may not work in practice. Petitions filed following a Rule 20 finding request a full-spectrum examination for MI, DD, and MI & D.
- The status quo of making medical records and examiner's reports confidential works just fine and strikes an appropriate balance. The public petition, orders, and hearings are sufficient to satisfy the public's need for information and oversight.
- Making a distinction for MI & D, SDP, and SPP cases will have an adverse effect on treatment. It is important to the integrity of the treatment process that the rules not regard the proceedings as punishment for past actions – even for dangerous offenders. The people involved are all victims of their own mental illnesses.
- The court's findings in MI & D, SDP, and SPP cases are lengthy and exceptionally detailed. The public can often look solely to the order to learn the factual bases for any individual commitment decision. The public doesn't have a need to view the medical records introduced in the case.
- There is an even greater need for confidentiality after the initial commitment has occurred in MI & D cases. Confidentiality ensures full disclosure and provokes successful treatment. It is also tremendously important for successful reintegration into the community;

confidentiality in the back-end of civil commitment proceedings benefits both the respondent and society.

- The distinction between classifying medical records as confidential while permitting the contents of such records to be publicly discussed is anomalous, but it works in practice. Permitting parties to discuss the records in court discloses enough information to satisfy the public need for safety and oversight but not more information than is necessary. This logical inconsistency has worked reasonably well.
- Documents admitted into evidence are public for good reason. They underlie the findings of the court. The public has a right to examine the evidence to determine for themselves whether the findings of the court track the evidence introduced at trial.
- Making medical records public may change how civil commitment cases are tried, depriving the court of relevant evidence and the ability to make an informed decision.
- The legislature has already determined that the respondent's interest in privacy is outweighed by public safety by requiring public notification upon release of a convicted sex offender into the community. Another member commented that the notification statute only requires disclosure of the fact of conviction and nothing in detail. It also places an affirmative burden on law enforcement to provide community notification. The notification requirement has nothing to do with treatment and arises out of a different context than civil commitment proceedings.
- Medical records introduced into evidence contain a great deal of information that is not relevant to the public's interest in the case. It is the Court's duty to sort through the relevant and irrelevant details and make appropriate findings.

A member commented that Public Access Rule 8, subd 5. will directly conflict with the committee's proposed Rule 21 (b). Public Access Rule 8, subd. 5 provides:

“Except where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.”

Under proposed Public Access Rule 1, any rule that conflicts with the Public Access Rules is superseded. Staff noted that the Public Access Rules Committee does not intend to make policy decisions that will impact another rules committee without seeking input from that committee.

Justice Anderson explained that it is not the intent of the Public Access Committee to subsume all other rules but to provide a roadmap for attorneys, parties and interested persons. One shouldn't have to review multiple sets of rules for an understanding of public access. The Public Access Rules contemplate exceptions, and the thought is that all such exceptions will be referenced in the

Public Access Rules. The Chair noted that the proposed advisory committee comment to Public Access Rule 4, subd. 4 appears to support the committee's proposal for Civil Commitment Rule 21(b).

Staff noted that the committee should draft a letter to the Public Access Committee Chair requesting an exception in the public access rules for making medical records admitted as evidence in civil commitment proceedings. The committee agreed that such a letter should be drafted.

CONSENSUS: No distinction with the type of commitment. Amend Rule 21(b) to clearly provide that medical records admitted into evidence in any type of civil commitment proceeding be classified as confidential and not accessible to the public.

IV. *Should the definition of Medical Records be expanded?* A member asked whether the definition of "medical records" was broad enough to encompass various other case management records from group homes and related facilities and whether the term should be expanded to include school records, law enforcement records, etc...

Among the points made were:

- If the committee wants an exception for keeping medical records introduced into evidence as confidential, the rule should be clear on what constitutes "medical records." If the definition is too expansive, the risk is that the Supreme Court may deny an exception altogether.
- If the committee's collective position is that the right to privacy outweighs the need for public access to medical records, is there room to make distinctions for other types of sensitive records such as school records.
- School records contain the child's Individual Education Plan ("IEP") and other social worker, speech and language, and psychological assessments, as well as the child's diagnoses. The privacy interests of the child in school records rises to the same level as that for medical records.
- School, law enforcement, and other records are protected from disclosure by the Data Practices Act and/or other state and federal laws. A member suggested that the committee consider proposing a rule that makes all records presumptively public unless another rule or law makes the records nonpublic. Another member commented that this would create a slippery slope and delegate the court's right to classify its own records to the legislature. The proposal would also require attorneys and parties to familiarize themselves with a broad array of state/federal laws on data classification.
- The parties' vehicle for protection of records beyond medical records is a protective order. Court staff would benefit from a consistent policy across records type. Under current policy, if there is any question concerning whether a record should be coded as confidential court staff is trained to default the document to confidential and alert the presiding judge.

Staff suggested the committee might consider amending Rule 21 or creating a stand-alone rule that reiterates the need to seek a protective order when and if parties require publicly accessible documents to be confidential and the standard for granting such an order. The Juvenile Protection Rules contain such a provision. The committee agreed that Rule 21 should be amended accordingly. In its letter to the Public Access Rules Committee, the committee will request that the Public Access Rules reference the Rule 21 provision somewhere within the body or comments to the Public Access Rules.

CONSENSUS: Non-medical records admitted into evidence shall be presumptively public. Parties may seek a protective order on a case-by-case basis if a confidential classification is desired. Amend Rule 21 to include provisions on seeking protective orders.

Review of proposed Rule 13. Staff reported that there had been a set-back in the pilot project for the Electronic Medical Records System (“EMRS”). Contract negotiations with the potential vendor have stalled on a liability issue. It is not known when the contract with the vendor will be finalized or when the EMRS will be functional. Staff has proposed alternate language in draft proposed Rule 13 to account for a possible delay in the rollout of the pilot project and the EMRS. The alternate language would permit the electronic transfer of medical records pursuant to supreme court order. The committee agreed to use the alternate language. If the vendor contract is finalized prior to the next meeting and a firm date for the EMRS functionality/rollout is known at that time, the original proposed language for Rule 13 will be included in the report to the court. If there is continued uncertainty at the next meeting, the alternate language will be proposed.

Strikethrough of Rule 6. A member noted that Minn. Stat. § 253B.23, subd. 1(b) appears to supersede Rule 6. The Committee agreed and reached consensus that the rule should be stricken.

Next Meeting. Judge Anderson thanked members for their time and efforts and noted that the next meeting is scheduled for Friday, December 12, 2014, at 1:30 P.M. Judge Anderson would like the committee to finalize a draft of proposed eCourt rules at the December meeting. The committee may need to communicate remotely in the interim and should keep an eye on their emails.

There being no further business, the meeting was adjourned.

Meeting Summary

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACTS

Friday, December 12, 2014
Minnesota Judicial Center Room 230

Members present:

Hon. Jamie L. Anderson, Chair

Hon. G. Barry Anderson, liaison justice

Donald R. Betzold

Rita Coyle DeMeules

Matthew G. Frank

Andrea Martin for John Kirwin

Cindy Lehr

Douglas McGuire

Katie Nolting

Joel C. Olson

James C. Snyder

Jim C. Zuleger

Deanna J. Dohrmann, Staff Attorney

Aaron Zurek, Staff Attorney

Guests present: Mike Johnson; Carla Heyl; Paul Regan and Patrick Busch.

Call to Order. Chair, Judge Jamie Anderson called the meeting to order. Judge Anderson noted that committee member, Robin Benson, had sent an E-Mail out to the committee regarding a couple of items. She asked the committee to review the E-Mail, as Mr. Benson was not present to introduce the items for discussion.

Review of proposed rule amendments. The committee reviewed and considered the proposed amendments to the Civil Commitment Rules.

Rule 6: A member noted a typo in the Advisory Committee Comment – “supersedes” at line 57 should be “supersede” or “statutes” should be singular. Staff will correct the typo.

Rule 13: Staff reported that the vendor for the EMRS has signed the contract. It is expected that EMRS will be up and running for a pilot sometime in March or April, 2014. Staff retained the proposed language implementing the EMRS which the committee previously approved in Rule 13.

- A member suggested that “relates” at line 112 (Rule 13 (a)) should be “relate” and that “respondent” should be changed to “person” or “an individual” because the definition will apply to all medical records not just those of the respondent. The Committee agreed to the suggested changes.
- A member proposed that the language at line 140 (Rule 13 (e)) be amended to the following for clarity: “... and medical records providers may submit medical records either electronically through the EMRS or conventionally by non-electronic means” or some variation thereof. The committee agreed to the proposed language.

Rule 26:

Staff explained that Rule 26 is a new proposed rule intended to allow the court, on its own motion, or a party to move for an order sealing otherwise public records on a case-by-case basis. Discussion on this rule was extensive. Some of the key points made included:

- The rule seems to be duplicative of Rule 21(d) and superfluous.
- A member raised concern that this rule may be used as a de facto method to expunge civil commitment records.
- Another member raised concern that the proposed rule would encourage parties to seek protective orders and that they will become the rule not the exception.
- A “protective order” ordinarily deals exclusively with prohibiting discussion or disclosure of confidential information and not to “protect” information from the public. A protective order is not like an order sealing court records or classifying court records as confidential.
- A member suggested that the codifying the “exceptional circumstances” standard may invite litigation as to what qualifies as “exceptional circumstances” And may be too burdensome and heightened when a protective order is sought for such a purpose.

Upon thorough consideration and discussion of Rule 26, it was the consensus of the committee to strike the proposed rule. The proposed new rule is unnecessary in light of Rule 21 (d).

Public Access Committee Update. Mike Johnson, Staff Attorney for the Public Access Committee, provided a brief update on the status of that committee and its discussions regarding the public access component of civil commitment records. It is the consensus of that committee to limit remote access in civil commitment matters to the register of actions and to permit electronic access to all public documents at the courthouse through MPA Courthouse. The Public Access Committee also supports this committee’s decision to maintain the confidentiality of medical records even when introduced and received into evidence as an exhibit at a hearing or trial. The public access

committee will support a reclassification of all civil commitment proceedings involving minors as a confidential case type. It would prefer a blanket reclassification of all types of civil commitments involving minors, as the burden on court administration staff in ensuring proper document classification in minor commitment cases depending on the type of commitment would be significant.

Rule 21:

The main discussion with rule 21 centered on whether an attorney must show Schumacher elements of exceptional circumstances in order to keep the data confidential when private data is contained in documents admitted into evidence. One member proposed language in rule 21(d) that would clarify that exceptional circumstances would not be required to be made when a law already exists to keep certain data non-public. Minn. Stat. § 13.03, subd. 6 provides by law, that if a document contains information that is “not public” as defined in section 13.02, subd. 8a, the court shall issue an order prohibiting public access, unless the court determines that the benefit to the public or to a party seeking access to the records outweighs the privacy interests of any individual identified in the records. One member questioned whether there would be a breach of duty by an attorney who “discloses” private data in a document that is admitted into evidence and becomes accessible to the public? Does the duty remain on the submitting party to redact private information? Other members pointed out that the data practices act does not apply to the court, as the rules of public access control. The consensus was that the rules should not address data practices and the submitting party would need to request an order to keep the document private or redact private information.

Other discussions regarding proposed language in rule 21 included:

- It was the consensus of the committee at the last meeting and via an E-Mail vote to reclassify all MI, CD, and DD, commitments involving minors as confidential.
- MI & D, SDP, and SPP proceedings involving minors are exceptionally rare; it makes little sense to make a distinction in the rules for different classification. The records should be classified consistently. If there is a public need for access to records in a particular case (i.e. public safety or oversight), the court should have authority to grant access.
- If there is a public safety concern, the Court can open the proceedings to the public.
- The public access committee supports reclassifying all civil commitment proceedings involving minors as a confidential case type. Public access committee opted for a blanket reclassification because the burden on court administration staff in ensuring proper document classification in minor commitment cases depending on the type of commitment would be significant.
- The public access committee supports no remote access to any type of civil commitment case type and this was supported by the civil commitment committee.

It was the consensus of the committee to recommend a blanket reclassification to confidential of all civil commitment proceedings involving minor respondents.

The committee approved the following amendments to Rule 21:

Rule 21. Public Access to Records

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

(b) The court administrator shall create a separate section or file in which the pre-petition screening report, court appointed examiner's report, and all medical records, shall be filed with or received by the court and .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' any party, witness, or the court's ability to mention the contents of the pre-petition screening report, court appointed examiner's report, and medical records in open court or in otherwise publicly-accessible pleadings or documents the course of proceedings under Minn. Stat., chapter 253B or 253D. Any reference to confidential reports or medical records does not render the reports or medical records available to the public, or create a sufficient basis for making the reports or records available to the public.

(c) Where electronic filing is authorized or required under Minnesota General Rule of Practice 14, the pre-petition screening report, court-appointed examiner's report, and all medical records filed with the court must be designated as confidential by the filing party. Upon discovery by court administration staff that the pre-petition screening report, court-appointed examiner's report, or medical records have not been designated as confidential by the filing party, the court administrator shall designate the document as confidential and notify the filer of the change in designation.

(d) The court may, sua sponte, or upon motion and hearing, issue an order prohibiting public access to civil commitment case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists.

(e) Except where authorized by the district court or order or directive of the supreme court or its designee, there shall be no public access to case records of proceedings seeking commitment of a minor. The petition for commitment of a minor must be designated as confidential by the filing party. Upon discovery by court administration staff that the petition for the civil commitment of a minor has not been designated as confidential by the filing party, court administration staff shall designate the petition as confidential and notify the filer of the change in designation.

Advisory Committee Comment – 2015

This rule is amended to clarify public access issues with civil commitment case records. Generally, civil commitment case records are publicly accessible. Rule 4, subdivision 2 of the Rules of Public Access sets forth the procedures for when a court may restrict access to public case records.

Rule 21(b) is amended to remove the requirement of court administration to maintain a separate location for certain records, as the court record is now in an electronic format and instructing the court administrator to keep confidential documents in a separate section or file is no longer applicable with the electronic record. As authorized by these rules and Rule 8, subdivision 5(b) of the Rules of Public Access to Records of the Judicial Branch, all medical records are confidential and shall not be accessible to the public except by express order of the district court. Rule 21(c)

establishes the duty of the filing party to properly classify medical records as confidential when filed in the E-Filing System. Medical records introduced and admitted into evidence during a hearing remain confidential.

There may be times when otherwise public documents should be kept confidential and rule 21(d) reminds court users that an order restricting public access may be requested by motion or may issue upon the court's own initiative. However, an order granting such relief must include specific findings that support the request. Pursuant to Minnesota General Rule of Practice 14.06, a Registered User electronically filing a document that is not accessible to the public is responsible for designating that document as confidential in the E-Filing System at the time of filing. A Registered User is defined in Minnesota General Rule of Practice 14.01.

Expanding public access to civil commitment case records over the Internet is particularly troublesome, given the sensitive nature of civil commitment proceedings. The Rules of Public Access to Records of the Judicial Branch clarify that civil commitment case records shall not be available over the Internet. Rule 21(e) contains provisions intended to satisfy the public need for safety and oversight along with safeguarding the privacy interests of a minor who may become or is civilly committed. The collateral consequences of public accessibility to civil commitment records can have long-term impact on minor respondents and adversely impact treatment. Rule 21(e) clarifies that case records of any civil commitment of a minor respondent shall not be publicly accessible absent a district court order or order or directive of the supreme court or its designee.

Concluding remarks: Judge Anderson explained that a final set of proposed rules and a draft report would be circulated to the committee members within the coming days. She asked that each committee members to carefully review the report and raise any issues in "reply-all" emails. The final report is due to the Supreme Court by December 29, 2014. Justice Anderson acknowledged the efforts of the committee and staff and thanked all for their contributions.

There being no further business, the meeting was adjourned.