

MEETING SUMMARY

**Minnesota Supreme Court Advisory Committee
on the Rules of Juvenile Protection Procedure and Adoption Procedure
Wednesday, September 10, 2014
Minnesota Judicial Center Room G-06**

Members present:

Hon. John McBride, Chair	Amanda Jameson	Shannon Smith
Hon. David Stras, Liaison	Geri Krueger	Jon Steinberg
Amie Ascheman	Jay Liedman	Benjamin Stromberg
Sharon Benson	Daniel Lovejoy	Joanna Woolman
Gayle Borchert	Erin O'Brien	Judy Nord, Staff Attorney
Hon. Janet Cain	Irene Opsahl	Ann Ahlstrom, Staff Attorney
Anne Gueinzus	Hon. David Piper	Aaron Zurek, Staff Attorney
Hon. Mark Ireland	Hon. Heidi Schellhas	Patrick Busch, Staff Attorney

Members Absent: Julie Friedrich, Hon. Bethany Fountain Lindberg, Jessica Maher, Ronda Morehead, Erin Sullivan Sutton

Guests present: Melissa Peterson, Sarah Novak, Carla Heyl

Welcome and Introductions

Committee chair, Judge John McBride, welcomed all members of the committee. Committee members introduced themselves.

Judge McBride's Opening Remarks

Pursuant to the Supreme Court Order appointing the committee, the committee's charge is limited to recommending revisions to the rules of juvenile protection and adoption procedure to accommodate the Judicial Branch's transition to eCourt. The committee also is authorized to correct typographical or technical errors in the existing rules.

Judge McBride's experience on the bench has shown him that the rules need to catch up to eCourt. General Rule of Practice 14 will be the main rule governing e-filing; its provisions are subject to changes by the General Rules of Practice committee. Judge McBride noted that

Juvenile Protection Rule 8 dealing with public access to CHIPS records will likely consume a significant portion of the committee’s discussion.

eFS System Demonstration

Judge McBride noted that, based upon a response to a pre-meeting survey, many committee members are not familiar with the electronic file and serve (eFS) system. For that reason, the meeting will start with a demonstration of the eFS system.

Melissa Peterson gave the committee a detailed demonstration of how the eFS system works, including how attorneys and others register themselves, file documents, and serve documents. During the demonstration, several questions were raised:

<i>Question</i>	<i>Answer</i>
1. How can people access the eFS system?	1. There is a link to eFS on www.mncourts.gov .
2. Is the eFS system accessible on iPads?	2. Yes, although it may not be accessible while using the Chrome browser.
3. Why does the eFS website refer to “registered firms,” while the draft e-filing rules refer to “registered users”?	3. Currently the eFS system does not mirror the language in the proposed rules.
4. Is it possible to filter through your filing history in eFS?	4. Yes.
5. Is it possible to serve documents through eFS without filing them?	5. Yes. One example is service of discovery.
6. How do you serve parties who have not agreed to accept e-service?	6. They are served conventionally, and then an affidavit of service must be filed through eFS.

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| 7. If a document is served through eFS but not filed, does the court have the ability to access the record of service? | 7. Yes. |
| 8. Do filers receive electronic notices if a filing is rejected? | 8. Yes. This is an automated feature of the eFS system; it is active unless a user turns it off. |
| 9. Is there a generic “other document” option for categorizing filings? | 9. Yes. |

During the presentation, a committee member noted her concern that the eFS website’s use of the term “firm” could be confusing. A “firm” can be an individual or a group of people, and members of a “firm” may or may not be attorneys. The committee agreed that any discrepancies in language between proposed General Rule of Practice 14 and the eFS website should be referred to the General Rules of Practice committee.

Some committee members expressed concern about the ability of members of the press or public to add themselves to cases for service, and asked if there was a process for involuntarily removing registered users who have added themselves to cases for service. The committee asked that the State Court Administrator get an answer from Tyler on this issue.

Another point of concern was that if a registered user adds a member of another firm to a case (e.g., the child’s attorney adds the child’s GAL who has not yet added herself), that user (e.g., child’s attorney) then has complete control over how the other member (e.g., GAL) receives service in that case – this is true even if the attorney added an incorrect email address for the other person. The committee agreed to recommend that the General Rules of Practice should contain a specific prohibition on adding an attorney from a different firm to a case, and that there should be authority for sanctions to be imposed for doing this. The committee also agreed that the General Rules of Practice should authorize sanctions for failure to register for service. One option might be “you snooze, you lose;” *i.e.* filers who fail to register are deemed to have waived service. There was concern that this might raise due process issues.

Public Access Demonstration

The committee next saw a demonstration of the Minnesota Public Access (MPA) Remote and MPA Courthouse View systems. Juvenile cases are reached through a page entitled “Civil, Family, and Probate Case Records.” It was suggested that this should be changed to read “Civil, Family, Juvenile, and Probate Case Records.”

Juv. Prot. Rule 8.06 currently provides that “there shall be no direct public access to juvenile protection case records [i.e., CHIPS and CHIPS-permanency] records maintained in electronic format in court information systems” (i.e., MNCIS). For that reason, if anyone were to use either MPA Remote or MPA Courthouse view to search for a CHIPS case using a known file number or the name of a parent or child, the search would result in a response of “no cases match your search request.” It was suggested that this response should be changed to “case exists, not accessible.”

Judge McBride noted several issues that will need to be discussed as part of the discussion on Juvenile Protection Procedure Rule 8, including whether and to what extent CHIPS records should be made remotely accessible and how to redact CHIPS records if they are made available through remote access.

It was noted that the rules refer to “inaccessible” records, while the website refers to “confidential” records. The language on the site should be consistent with the language in the rules.

Justice Stras’ Charge to the Committee

The Minnesota Supreme Court appreciates the committee members’ willingness to serve. The committee’s work will be very helpful to the Court. The committee’s primary role is to determine what amendments are necessary in light of eCourtMN. However, whenever possible the committee should also identify ways of simplifying the rules of Juvenile Protection and Adoption procedure by simply referencing other rules and statutes rather than incorporating them into these rules.

In 1998, the juvenile protection rules were set up as a one-stop-shop combining both statutory substantive law and procedural rules in an effort to assist attorneys, judges, and pro se litigants to navigate the complex world of juvenile protection procedures. While the approach was admirable, it has also caused problems: the text of the rules can become obsolete after legislative action, and there are problems when the text of a one-stop-shop rule differs from the text of the statute. This issue may require additional attention in the future, but the committee should consider any fixes that can be put in place now.

Simplification of the Rules

Judge McBride explained the difference between procedural rules and substantive laws. Justice Stras explained his personal view on the issue: the rules should merely reference the statutes on substantive issues, but should be more carefully worded on procedural issues. Long, duplicative rules are not helpful, but the judiciary does not delegate its power to the legislative branch when it comes to procedural issues.

Judge McBride discussed the possibility of simplifying the rules by amending language that currently merely parallels or mirrors the text of governing statutes. Both Judge McBride and Justice Stras believe that the rules need to be simplified by removing the parallel language. Judge McBride offered three options: (1) make no such amendments (keep the rules as a “one-stop-shop”); (2) amend the rules so that they contain references to statutes and summarize the statutes’ contents; and (3) amend the rules to contain references to statutes and no parallel language. Judge McBride’s preference is for option (3).

Several committee members agreed with Judge McBride that the rules should be amended to contain only references to statutes and no parallel language. Some members recommended that electronic versions of the rules contain hyperlinks to the statutes that are referenced. This could be of assistance to judges, lawyers, and to *pro se* parties. Judge McBride noted that hyperlinks weren’t in widespread use when the concept of a one-stop-shop came into favor, but would now likely be welcomed by all.

Committee Deliberation Process

Judge McBride suggested two ways of conducting deliberations: the formal “Robert’s Rules of Order,” which require motions and seconds and voting, versus the less formal “consensus approach.” The committee reached consensus that it should continue to operate under the consensus approach.

Review of Proposed Amendments to the General Rules of Practice

Judge McBride asked the members to consider two issues: (1) what input should the committee give to the General Rules of Practice committee; and (2) the extent to which the Juvenile Protection Procedure Rules should differ from the General Rules of Practice. This includes considering whether to amend Juvenile Protection Procedure Rule 3 so that the General Rules of Practice will generally apply to CHIPS cases. Judy Nord said that the staff attorneys would screen the Juvenile Protection Procedure rules for any potential conflicts with the General Rules of Practice.

- **General Rule of Practice 11:** The committee considered whether there should be a broader definition of “confidential information” in CHIPS cases than in general. This issue will need further discussion in the future.

- **General Rule of Practice 14**
 - **Rule 14.01(a)(4):** This proposed rule defines the term “Internet e-mail.” A committee member suggested it would be appropriate to use the term “E-mail” instead of “Internet e-mail.”

 - **Rule 14.01(b):** The proposed rule makes e-filing mandatory for attorneys “unless otherwise required or authorized by ... an order of the court.” The committee noted that this was a potential source of ambiguity: does “court” refer to individual trial courts or the Minnesota Supreme Court? The committee believes that this should be clarified.

- **Rule 14.01(b):** The rule title refers to “mandatory and voluntary e-file and e-service,” but the rule itself does not mention service. Some committee members stated that the rule should make reference to service; perhaps there should be a reference to Rule 14.03(d).

- **Rule 14.03(i)** Several committee members had serious concerns about the proposal that proposed orders should be e-mailed to the judge rather than being electronically filed. Concerns included the following:
 - There are many different types of proposed orders, and a blanket rule is inappropriate.
 - In CHIPS cases, proposed orders need to be in the file.
 - Proposed orders should be filed so there is documentation of when (and whether) they were submitted.
 - One district judge said that he thought it seemed “underhanded” for a judge to receive a proposed order and not have it become part of the record.
 - Another district judge said that his understanding of the appellate rules was that everything the trial judge considers must become part of the record.
 - Another committee member said that transparency was promoted by having proposed orders be part of the record.
 - One district judge said that it would be more convenient for her to have all proposed orders filed: in unassigned cases, having them filed rather than e-mailed would make them available to the judge as soon as they were filed.
 - An attorney described a practice of county attorneys’ delivering proposed orders to the court before she had the opportunity to review them. She said that this practice needed to change; one way of changing it would be to require that proposed orders be e-filed and served.
 - An appellate court judge said that proposed orders should be filed. She said that this is an opportunity to cut out a sloppy practice.
 - Justice Stras remarked that the ability to easily make proposed orders a part of the record is an advantage of e-filing.

- The committee acknowledged the concern that proposed orders could clutter up the file. Some committee members suggested that proposed orders could be clearly designated as such.
 - One committee member expressed concern about amending proposed orders after they have been signed, as this could lead to IV-E issues. (This was not discussed in detail at the meeting.)
- ✓ **CONSENSUS**: The committee reached consensus that proposed orders should be filed, and asked that the following comment be sent to the General Rules of Practice Committee: The Juvenile Protection Procedure Rules Committee, including every judge on the committee, feels strongly that proposed orders should be filed.
- **Rule 14.04(c)**: The proposed rule states that e-filed documents need not be notarized “unless specifically required by court rule.” The committee believes this should be amended: “unless specifically required by court rule or statute,” as some statutes may require notarization. As part of this discussion, some committee members suggested adding a click-through acknowledgement to the eFS system: filers acknowledge that by filing, they are representing their true identities, and that any statements made under penalty of perjury are subject to penalties of perjury. One committee member suggested that the filers should be advised of the range of penalties for perjury. Another member noted that the federal courts have made it work without notarized affidavits. The committee may discuss this issue further.
- **Rule 14.06**: Several committee members expressed great concern over the proposed rule that documents submitted for *in camera* review could not be submitted through the eFS system. Two judges on the committee said they found the proposed rule “shocking”; Justice Stras said that he did not understand why the proposal had been made, and that it seemed to defeat the purposes of e-filing.
- ✓ **CONSENSUS**: The committee reached consensus, and asked that the following comment be sent to the General Rules of Practice Committee: The Juvenile Protection Rules Committee is strongly opposed to submitting documents for *in*

camera review outside of the E-Filing System. The Juvenile Protection Rules Committee recommends that documents submitted for *in camera* review be submitted through the E-Filing System under seal, and be accessible only to the judge to whom they are submitted.

Discussion of the Definitions of “Confidential” and “Sealed”

The committee members noted that the words “confidential” and “sealed” are not included in the definitions section of General Rule of Practice 14. It was suggested that definitions of “confidential” and “sealed” be added to the General Rules of Practice. This issue will require further discussion when the committee reviews Juvenile Protection Procedure Rule 8. It’s important to provide clear definitions of the two terms to court administration staff.

Overview of Draft of Proposed Amendments to the Rules of Juvenile Protection Procedure

Rule 2.01: The committee agreed that the restatement of Minn. Stat. § 358.116’s requirements should be deleted, leaving only a reference to the statute.

Rule 4.02: It was suggested that the committee change the reference to “local time” to be consistent with proposed amendments to the other rules, which are proposed to be “local Minnesota time.” This eliminates a potential for ambiguity when people are being served across time zones.

Rule 8: The committee left discussion of Rule 8 for a future meeting, as the discussion is likely to be extensive.

Rule 10: The proposed rule allows service of court orders “by electronic means.” The committee members had several concerns about this language:

- By “electronic means” is very broad language.
- The rules should not give too much discretion to court staff in determining how to serve orders. There is a history of unintentional preferential service of orders (*e.g.*, court staff email orders to some attorneys and mail them to others, or have a drop box for the county attorney).

- Perhaps parties should be able to agree to service by electronic means, but this is distinct from the court serving orders by electronic means.
- It is important to have flexibility in methods of service; sometimes creative ways of serving people are necessary.
- If the parties agree to service by electronic means, what record is there of the agreement?
- It's not clear if "electronic means" includes facsimile service. There are concerns about abolishing service by facsimile, especially because that sometimes how service is made upon Indian tribes.
- ✓ **CONSENSUS**: The committee asked that its concerns about the vagueness of the term "electronic means" be relayed to the General Rules of Practice committee. In particular, the committee is concerned that proposed Rule 14.03(d) does not specify the means of service upon non-registered users. Some members remarked that they found proposed Rule 14.03(d) confusing.

Adjournment

The committee adjourned for the day. Judge McBride thanked the members for their contributions, and asked that they look carefully at the proposed amendments to Juvenile Protection Rule 8. There will likely be substantial discussion over Rule 8 at the next meeting.

MEETING SUMMARY

**Minnesota Supreme Court Advisory Committee
on the Rules of Juvenile Protection Procedure and Adoption Procedure
Tuesday, October 14, 2014
Minnesota Judicial Center Room G-06**

Members present:

Hon. John McBride, Chair	Amanda Jameson	Shannon Smith
Amie Ascheman	Geri Krueger	Jon Steinberg
Sharon Benson	Jay Leidman	Joanna Woolman
Gayle Borchert	Daniel Lovejoy	Ann Ahlstrom, Staff Attorney
Hon. Janet Barke Cain	Jessica Maher	Judy Nord, Staff Attorney
Julie Friedrich	Erin O'Brien	Aaron Zurek, Staff Attorney
Anne Tyler Gueinzius	Irene Opsahl	Patrick Busch, Staff Attorney
Susan Halpern	Hon. David Piper	
Hon. Mark Ireland	Hon. Heidi Schellhas	

Members absent: Hon. David Stras, Liaison Justice; Hon. Bethany Fountain Lindberg; Rhonda Morehead; and Benjamin Stromberg

Guests present: Carla Heyl and Katie Sutton

Welcome and Introductions

Committee chair, Judge John McBride called the meeting to order and welcomed all members. Committee members introduced themselves.

September Meeting Summary Approval

Judge McBride reminded the Committee that it had decided at the last meeting to proceed by consensus rather than by formal "Robert's Rules of Order." The Committee approved the September 10, 2014, Meeting Summary by consensus.

Update of General Rules and Public Access Committees

Staff updated the Committee on the progress made by the General Rules of Practice and Public Access to Court Records committees since the last meeting. At its September 24th meeting, the General Rules Committee reviewed and discussed this Committee's comments and proposals regarding Rule 14. The General Rules Committee adopted several of this Committee's proposed amendments, but has not yet made a determination on the Committee's comments concerning the

electronic filing of proposed orders and documents submitted for *in camera review*. The Public Access Rules Committee met on September 16, 2014, and will hold its second meeting on the afternoon of October 14, 2014. The Public Access Committee is expected to devote an extensive amount of time to discussing Rule 8 and the distinction between public access and remote public access at that meeting.

Juvenile Protection Rule 8 Historical Background

Judge Heidi Schellhas provided an historical overview of the Supreme Court's decision to open child protection hearings (Rule 27) and records (Rule 8) to the public. In 1995, the Minnesota Supreme Court established a Foster Care and Adoption Taskforce. The Taskforce was divided into two committees and eight subcommittees – one of which was the “open hearings” subcommittee chaired by Judge Schellhas. In 1997, after extensive research and discussion, a majority of the Taskforce recommended to the Supreme Court that child protection hearings be presumed open to the public absent exceptional circumstances. The majority believed that the closed hearing system lacked public accountability and concealed abuses. A minority opposed open hearings, fearing the harm and embarrassment which would befall on children due to public exposure.

The Supreme Court asked the Conference of Chief Judges to consider a pilot project for open child protection hearings and records. The Conference of Chief Judges in turn recommended that the court proceed with a pilot project, and a three-year pilot project commenced in June 1998. In the summer of 1999, the National Center for State Courts (“NCSC”) conducted an independent evaluation of the pilot project. To date, Minnesota is the only state that has subjected itself to such an evaluation. Those critical of Minnesota's open hearings/record evaluation fault it for not consulting parents and children regarding the impact that open hearings/records would have upon them. During its evaluation, the NCSC chose not to consult parents and children due to the lack of reliable data, as the hearings had never been open previously. After reviewing the evaluation data, the Conference of Chief Judges recommended that the Supreme Court adopt rules making hearings and records accessible to the public, with limited exceptions. Rules 27 (hearing) and Rule 8 (records) became effective in July 2001.

Discussion Item: Rule 8 Access to Juvenile Protection Records

Judge McBride next introduced Juvenile Protection Rule 8 for discussion. He explained that the charge from the Supreme Court authorizes the Committee to consider and determine how juvenile protection records will be treated in an electronic world. But the charge is not expansive enough to permit the Committee to revisit prior policy decisions concerning the public or nonpublic classification of juvenile protection hearings and documents.

The Committee identified the following issues for discussion and considered each in turn: (1) What type of electronic access, if any, should the public receive to public juvenile protection records? (2) Who should have the burden to redact nonpublic information from public documents? (3) Should 8.04, identifying nonpublic records and information, be amended to afford participants access to the nonpublic records itemized in the rule? (4) Should exhibits received into evidence continue to be treated as public records (Rule 8.05)? (5) Should education records be nonpublic? (6) Should minors' names and dates of birth be nonpublic? (7) Should Rule 8.01 concerning the transfer of records on appeal be amended to reflect current processes in an electronic world?

(1) What type of electronic access, if any, should the public receive to public juvenile protection records?

The Committee discussed four options: (i) maintain the status quo and continue to allow public access to redacted versions of paper copies but prohibit electronic access to all records; (ii) limit electronic access to the Register of Actions ("ROA") via the Courthouse View and/or Remote Access; (iii) limit electronic access to the ROA and a redacted version of the petition and all orders via Courthouse View and/or Remote Access; or (iv) limit electronic access to the ROA and a redacted version of all documents via Courthouse view and/or Remote Access.

Major points of the Committee's discussion on this topic included:

- Several members voiced concern that permitting electronic access to documents will subject juvenile protection records to data mining. The members questioned the security of the public access portal and inquired whether a google search would turn-up juvenile protection records. Staff explained that the portal will be secure and not linked to internet search engines.

- A member noted that data mining is a real issue as staff in her office had recently been contacted by a company offering to conduct a background search and compile court records for as little as \$30.00 per individual. Another member commented that perhaps a way around data mining is to shadow the Federal Pacer approach and charge a per page viewing fee.
- The ROA is electronically accessible by the public in civil, criminal, family, civil commitment, and probate proceedings. There is no rational basis for treating the ROA in juvenile protection proceedings any different. The juvenile protection rules are the only set of court rules that make the proceedings and many records open to the public but prohibit electronic accessibility.
- No one wants to see children victimized. But custody matters involve similarly horrible facts and sensitive information; yet the ROA in those proceedings is electronically accessible.
- Allowing remote access to the ROA will permit parties and participants to determine precisely which documents they want to view and limit the number of broad requests for records. This would reduce the burden on court staff from broad-based requests for access to records. It will also allow parties and participants to remotely keep abreast of the status of the case and verify court hearing dates.
- If the rules are amended to permit remote access to the ROA, children's names and dates of birth should be masked from public view. Is this functional under current technology? If not, how much would it cost to implement?
- Pursuant to Rule 8.08, subd. 2, the Court of Appeals already redacts the names of children and parents and includes only initials in juvenile protection appeals decisions – why shouldn't this also be the case in the district court?
- A member commented that the gender and race of all parties should also be masked.
- A member questioned whether the ROA would show-up on LexisNexis background checks if made remotely accessible.
- Attorneys representing parties in a case should have remote access to the ROA and all documents in the case. Staff noted that government partners and attorneys in the case will have access through a separate government access portal (“MGA”).

DECISION: After extensive discussion, the Committee reached consensus that option (ii), limiting electronic access to the ROA, is the preferred approach. The Committee did not reach a consensus as to whether the ROA should be accessible only via Courthouse View or if it should also be available via Remote Access, and agreed to table that decision until the October 28th meeting. If the portal has the ability to mask children's names and dates of birth, many members would support Remote Access to the ROA. Staff will determine whether this can be done under current technology and report back to the Committee.

Public access options (iii) and (iv) above are not desirable because nearly every petition and a large number of documents filed in juvenile protection proceedings require some form of redaction. In 2004, in an effort to partially remove the redacting burden from court administration staff, Rule 33.01 concerning the drafting and filing of petitions was enacted. It requires the petitioner (most often the county) to file both an original and redacted copy of each petition. Overall, county attorneys have not complied with this requirement. When county attorneys have submitted redacted petitions, some have been over-redacted (deleting more information than is required by Rule 8.04) or under-redacted (not deleting all information required by Rule 8.04). As a result, court administration staff have been required to review all petitions submitted by the county to ensure they are properly redacted. Court administration committee members indicated that this "review" process can sometimes be more time consuming than if they had just completed the redacting themselves rather than relying on others to redact.

With respect to public access options (iii) and (iv), the committee also expressed concern about requiring each filer to file a "clean" and a redacted version of each document. Judges on the committee stated they do not want to have to sort through all of the documents (redacted and unredacted) to find the version they are seeking. In addition, there was concern that unrepresented parents, foster parents, and others may not fully understand what is required to be redacted. Because filers have historically not performed the redactions, the burden is on court staff to perform the redactions. Because filers have historically not performed the redactions, the burden is on court staff to perform the redactions. The redactions are typically performed on a request-by-request basis, as opposed to redacting upon filing. Court administration representatives on the committee stated that, to date, with the exception of the recent requests by the Star Tribune to access to records statewide, there have relatively few requests by the public

for access to juvenile protection records. Most requests are from parents or relatives involved in the proceedings. The committee acknowledged that any need for comprehensive redaction of documents would be an insurmountable burden on court staff.

(2) Who should have the burden to redact nonpublic information from public documents?

The Committee discussed this issue at length. It did not reach a consensus but will revisit the issue at its next meeting. Major points of the discussion included:

- Although Rule 33.01 requires petitioners to shoulder the burden of redaction and file a redacted petition along with the original, the rule has historically been ignored. So the burden to redact is already on court staff anyway. One member noted that she has had petitions rejected by court staff because they were redacted, which indicates that even court staff is not aware of the petitioner's burden to redact.
- Court staff receives a very small number of records requests; for that reason, it is less burdensome on court staff to perform the redactions on a request-by-request basis rather than a comprehensive redaction of all petitions and documents.
- In Ramsey County, when a request for access is received, court staff notifies the petitioner and asks the petitioner to perform the redactions. This approach has worked well.
- A member proposed that Rule 33.01 be amended so that a petitioner is not required to proactively redact but redact only "upon request of the court administrator." There was substantial support for this proposal. One member commented that the proposed amendment may create more work for court staff in larger counties and requested time to speak with Hennepin County Court Administration regarding the proposed change before the Committee takes any action. The Committee agreed to table the matter until the next meeting.

(3) Should 8.04 be amended to give participants access to the nonpublic records itemized in the rule?

Rule 8.04 specifies the records and information not accessible to the public and parties. The rule is silent about access to records and information by participants. For that reason, with respect to access to records participants have been treated the same as members of the public.

Major points of this discussion included:

- Some members believe that Rule 8.04 should be amended to allow all participants to have access to the Rule 8.04 nonpublic records. Rule 22.01 defines “participants” in a limited fashion. The rules already contemplate that participants are entitled to certain rights, including a copy of the petition, notice of and attendance at hearings, and the right to offer information to the court. Transparency for participants involved in a case serves the best interests of the child and is important for all involved.
- Other members believe the rule should not be amended. If participants want access, they can move to intervene as a party. Under this approach, the court has discretion to limit or broaden access as it deems appropriate under the circumstances.
- The Committee should be cautious in recommending an expansion of access to all participants. Not all participants have equal footing with respect to the child (e.g., a parent versus a foster parent or educator or service provider). Some participants may seek access to the information for the wrong reasons – to use the information in a self-serving manner in family court proceedings.
- Expanding access is concerning because not all participants are actually participating in the child’s life. The list of nonpublic records under Rule 8.04 is broad and encompasses psychological evaluations, medical records, and other records containing sensitive information. Disclosure to uninterested participants could harm the child.
- A member questioned whether this proposal and discussion was within the scope of the Committee’s charge and tangentially related to the eCourtMN initiative.
- As written, the current rule relegates participants to the same access level as the general public. Participants should be permitted to request access from the court. Several members supported this approach, but stressed that the rules need to be clear regarding how a participant requests access: by motion? by informal request? request on the record?
- As an alternative, the rule could presume access to participants who are entitled to intervene as a party as a matter of right under Rule 23.01 and require court approval for all other participants. Limiting access to such participants would help to ensure that only the most interested participants receive access.

DECISION: It was the consensus of the Committee that participants entitled to intervene as a matter of right under Rule 23.01 should be permitted to ask the court for access to the nonpublic

records listed in Rule 8.04. To ensure clarity and a uniform procedure in such requests, the Committee determined that the requests should be made on the record. The Committee agreed that the following language should be added to the end of the first paragraph of Rule 8.04: “Upon oral or written request made on the record and order of the court, participants who have a right to intervene pursuant to Rule 23.01 may have access for inspection and copying to all records in the court file, except records (b), (d), and (e) listed below.”

(4) Should exhibits received into evidence continue to be treated as public records (Rule 8.05)?

Rule 8.05 provides “Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.”

The Committee discussed whether exhibits admitted into evidence should continue to be treated as public records under Rule 8.05. The discussion was extensive. Some of the key points included:

- Exhibits constitute the bulk of the evidence received at contested hearings and trials. Restricting access would shield a great deal of information from the public.
- This is a policy question that should not be revisited by the Committee. The Open Hearings Subcommittee already considered this matter at length and concluded that if the court received an exhibit or evidence produced at trial, the record should be accessible to the public. Rule 8.05 already permits the court to issue a protective order prohibiting access to exhibits on a case-by-case basis.
- Exhibits are where the most sensitive information is contained. They should be nonpublic. In opposition to this viewpoint, another member noted that exhibits received in family court proceedings often contain equally sensitive information, and those records are public
- A court administration member commented that she has never had a member of the public request access to an exhibit and that exhibits are not electronically scanned or electronically accessible under current court procedure. She noted that the retention period for exhibits is significantly shorter than that for records in the case file.
- The “exceptional circumstances” standard for prohibiting public access under Rule 8.07, subd. 1 is inconsistent with the lower standard for prohibiting party access under subd. 2. The latter should be subject to the “exceptional circumstances” standard as well.

- A member asked whether this issue is related to the eCourtMN initiative and questioned whether the Committee should even be considering changing the public classification of exhibits.

DECISION: A majority of the Committee determined that this issue was not tangentially related to the eCourtMN initiative and beyond the scope of the charge to the committee. The discussion was ended without further action by the Committee.

(5) Should education records be nonpublic?

Federal law now mandates that education and medical records, including records regarding use of psychotropic medications, be attached to case plans, and Minn. Stat. § 260C.212 has been amended to reflect that requirement. The Committee discussed whether or not to classify such records as nonpublic in Rule 8.04. Medical records are already classified as nonpublic under the Rule.

DECISION: The Committee agreed by consensus that education records (with the exception of attendance records) should be added to the list of nonpublic documents under Rule 8.04. The Committee reasoned that education records are protected by schools in the same manner that medical records are protected by hospitals and healthcare providers and should be treated similarly under Rule 8.04. However, due to the importance and centrality of attendance records in CHIPS truancy proceedings, the Committee determined that attendance records should be excepted from the nonpublic classification. The Committee approved the following amendment to Rule 8.04 (f):

“(f) medical records, chemical dependency evaluations and records, psychological evaluations and records, ~~and~~ psychiatric evaluations and records, and a child’s education records with the exception of attendance records;”

(6) Should minors’ names and years of birth be nonpublic?

The Committee next discussed whether the names of children should be excluded from all documents filed with the court and, instead, replaced with children’s initials. The General Rules Committee is considering adding minor’s names and dates of birth to the definition of “restricted

identifiers” in Minn. Gen. R. Prac. 11.01 (a) to mirror Fed. R. Civ. P. 5.2 (a). The change would require filers to redact minor’s names from any document filed with the court and include only the child’s initials.

Some of the key points of this discussion included:

- Staff Attorney Ann Ahlstrom noted that under Title IV foster care funds audit practice, all orders removing the child from the home must include the child’s full name. Federal law also prohibits attaching a separate confidential information sheet containing the child’s name. The child’s name must appear in the order. If the General Rules Committee goes in this direction, this Committee will need to except juvenile protection orders from the Minn. Gen. R. Prac. 11.02 (b) restricted identifier prohibition.
- If child’s names are removed from court filings the child will not be viewed as a person but, instead, will be viewed in the abstract. This will be inconsistent with the best practice of considering each case “through the eyes of the child.”
- It will be difficult for judges and court staff to read and navigate documents if only a minor’s initials are included and the court must consult a separate confidential information sheet for the child’s name. This will add unnecessary complexity in an already complex area.
- In many cases, all of the children have the same initials. If the rules are amended to require use of initials rather than full names, it will make it difficult for the court and others to know which child is being referenced.
- Minor’s names have been public for so long already – what are we aiming to cure?
- A minor’s initials are still identifiable when viewed in context of his/her parents’ or siblings names. The only way to truly shield the child’s name is to redact any and all information from which the child’s name could be inferentially identified.

DECISION: The Committee will revisit this issue after the General Rules Committee determines whether or not to amend Rule 11.01 to include a minor’s name in the list of restricted identifiers.

(7) Should Rule 8.01 concerning the transfer of records on appeal be amended to reflect current processes in an electronic world?

A member commented that the procedure codified in Rule 8.01 concerning the transmission of and public access to case records on appeal is obsolete because the district court no longer transmits a paper case record to the appellate courts.

DECISION: The Committee agreed that Rule 8.01 should be amended as followed to reflect the branch's transition to electronic storage of case records:

“8.01 Presumption of Access to Records

Except as otherwise provided in this Rule, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party and any member of the public for inspection, copying, or release. ~~Records or information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. If a party or a member of the public requests access to the juvenile protection case record during the appeal, the portion of the case record requested shall be returned to the trial court to be redacted pursuant to Rule 8.04 before access shall be allowed. The Minnesota Court of Appeals or the Minnesota Supreme Court shall deny access to the case records during the appeal if providing access would unduly delay the conclusion of the appeal. Any order prohibiting access to the court file, or any record in such file, shall be accessible to the public.”~~

Notarized Affidavits vs. Declarations Subject to Perjury

The committee discussed a proposal under consideration by the General Rules Committee to amend Gen. R. Prac. 15 to permit declarations under penalty of perjury ([Minn. Stat. § 358.116](#)) in lieu of a sworn, notarized signature in affidavits and other documents filed with the court.

Comments made included:

- A key purpose of the notary requirement is to obtain proof of the identity of the signer. For this reason the statute is flawed.
- Another committee member noted that the lack of an ability to prove the identity of the signer(s) may cause unnecessary motion practice, particular for settlement agreements and admissions.

DECISION: The consensus of the Committee was that use of the new statute, authorizing declarations under penalty of perjury in lieu of sworn/notarized signatures, should be generally permitted but that for settlement agreements and admissions a notary should continue to be required. The rules will be amended consistent with this decision. An advisory committee comment will explain that the juvenile protection rules depart from the statute for these two document types to ensure the identity of the person signing.

Review of proposed rule amendments

The committee reviewed and considered the proposed amendments to the Rules of Juvenile Protection Procedure sequentially.

Rule 2.01: The Committee agreed that the rules should not duplicate the General Rules where possible. Rather than define “Affidavit” in such a manner to permit signature under penalty of perjury pursuant to Minn. Stat. § 358.116, the rule should reference the General Rule of Practice where the term is defined. A member questioned whether Rule 2.01 should contain definitions for “party” and “participant.” The Committee determined that such an amendment is outside the scope of the Committee’s charge.

Rule 4.02: The Committee approved the proposed amendment to Rule 4.02, replacing the term, “paper,” with “document,” and approved the change throughout the rules.

Rule 8.04 (e): Staff noted that Rule 8.04 (e) provides that “HIV test results” are nonpublic documents. Other jurisdictions restrict access to “Records of HIV testing.” Read literally, the current rule shields only the results of HIV tests and does not shield the fact that an HIV test has been performed. There was consensus to replace “HIV test results” with “Records of HIV testing.”

Rule 10:

Rule 10.03: Several Committee members voiced concern that the term “electronic means” proposed in Rule 10.03 provides little guidance and is too broad. This concern was raised at the General Rules Committee’s September meeting. The General Rules Committee agreed that the term was too broad and approved the following definition: ““Electronic means’

includes transmission using computers or similar means of transmitting documents electronically.” The Juvenile Protection Rules Committee believed that the definition creates even more ambiguity. A member suggested that Rule 10.03 be amended so it specifies that service of court orders may be accomplished by “U.S. Mail, through the E-Filing System, by internet email or other reasonable electronic form as agreed upon by the party to be served, or as otherwise directed by the court.” It was the consensus of the Committee to adopt this proposal, as it specifies the approved electronic service options and allows the party to be served to agree to other reasonable forms of electronic service.

Rule 10.04: The Committee approved the proposed amendment to Rule 10.04, replacing “mailed” with “transmitted” without objection or comment.

Rule 15.02: The Chair noted that the proposed amendment providing for service through the E-Filing System should be consistent with the language in Gen. Prac. R. 14.03 describing service on Registered and Non-Registered Users. The Committee agreed and approved the following amendment to Rule 15.02:

“Service of a motion ~~may be made by personal service, by mail, or, transmitting a copy by facsimile transmission pursuant to Rule 31~~ upon Registered Users shall be made in compliance with Rule 14.03 of the General Rules of Practice. Service of a motion upon Non-Registered Users shall be made by personal service, U.S. mail, or internet email or other reasonable electronic form agreed upon by the party to be served.”

A Committee Member commented that compliance with [General Rule of Practice 12](#), which requires comparable means of service and filing, will be an impossibility for Registered Users who are mandated to electronically file but unable to electronically serve documents on parties or participants who are Non-Registered Users and who have not consented to service via other electronic means (i.e. Internet email or fax). This issue may need to be considered and addressed by the General Rules Committee.

Rule 16: The Committee approved the proposed amendment requiring the inclusion of the email address of the filer in the signature block of every document filed through the E-Filing System.

To clarify the last sentence of the rule, regarding certification, the Committee approved the following amendment:

~~“When authorized by order of the Minnesota Supreme Court, T~~the filing, serving, or submitting of a document using ~~an~~the court’s E-Filing System ~~established by order of the court~~ constitutes certification of compliance with Rule 16.02 ~~the signature requirement of these rules.”~~

Rule 21.03: A member commented that the proposed amendment to Rule 21.03 requiring litigants to inform court administration of a change in their email address is inconsistent with the current functionality of the E-Filing System because court staff do not have the ability to update a Registered User’s email address in eFS; accordingly, requiring parties to notify the court of a change in their email addresses is meaningless. Staff noted that Non-Registered Users who have agreed to service of notices through internet email would still need to notify the court of a change in their email address. The Committee agreed that the Rule should require Registered Users to update their email addresses in eFS and Non-Registered Users to notify the court of any change in their email address. Staff will draft proposed language and present it to the Committee for approval at the next meeting.

Rule 22.03: A member commented that Rule 22.03 requires participants to notify the court of any change in their addresses and questioned whether the rule should be amended to require participants to also notify the court of any changes in their email address. The Committee agreed that the rule may require amendment, similar to the amendment to Rule 21.03. Staff will review the rule and draft proposed language for consideration at the next meeting.

Rule 30.09: The Committee approved the proposed typographical amendment without comment or objection.

Rule 31.01: The Committee approved the following amendment to subdivision 1:

“When mandated to file a document electronically through the E-Filing System, the document shall be filed in accordance with Rule 14 of the General Rules of Practice. Otherwise, Aany document may be filed with the court either personally, by U.S. Mail, ~~or by facsimile transmission~~ or electronically through

the E-Filing System.” ~~When authorized by order of the Minnesota Supreme Court, documents may be filed electronically by following the procedures of that order and will be deemed filed in accordance with the provisions of that order.~~

The proposed amendment to subdivision 2 eliminates filing by facsimile. This proposal is consistent with similar proposals to eliminate facsimile filing under consideration by the General Rules of Practice and Civil Rules committees. A member commented that there may still be a need for facsimile filing in emergencies when the E-Filing System is down. The Committee determined that this is an issue for the General Rules Committee and approved the proposed amendment to eliminate facsimile filing in Rule 31.01, subd. 2.

Rule 31.02: The Committee approved all proposed amendments to Rule 31.02 and the following additional amendments:

Rule 31.02, subd. 1: A member noted that the inclusion of the phrase, “unless the court authorizes service by publication,” is confusing. Personal service is not service by publication. The Committee concurred that the language should be stricken from the rule. Another member questioned whether the word, “original,” should be stricken from the definition of personal service, as it is superfluous. E-filed copies of documents will be original documents. It was the consensus of the Committee to strike “original” from the rule.

Rule 31.02, subd. 3: A member proposed that the phrase “unsuccessful efforts” be replaced with “diligent efforts” to more accurately describe the standard for authorizing service by publication. The Committee approved the proposed amendment.

Rule 31.02, subd. 5: The proposed amended language to this rule, requiring electronic service of documents, should mirror that in Rule 15.02 regarding service of motions. Staff will draft proposed language and present it to the Committee for consideration at the next meeting.

Rule 31.03: The Committee approved the proposed amendments to this rule without objection or comment.

Rule 31.05: The Committee approved the following amendment to Rule 31.05:

“Service by mail is complete upon mailing to the last known address of the person to be served. Service by ~~facsimile~~ electronic form is complete upon completion of the ~~facsimile~~ electronic transmission.”

Rule 31.06: The Committee approved the proposed amendments to Rule 31.06 without objection or comment.

Next Meeting

Judge McBride thanked the members for their contributions, and asked that they look carefully at the proposed amendments to the remaining rules. The next meeting will be held on Tuesday, October 28, 2014. The Committee will complete its review of the rules then. Judge McBride encouraged members to review the proposed amendments to the remaining rules in the interim and to send any comments or additional proposed language to Judy Nord prior to the next meeting.

There being no further business, the meeting was adjourned.

MEETING SUMMARY

**Minnesota Supreme Court Advisory Committee
on the Rules of Juvenile Protection Procedure and Adoption Procedure
Tuesday, October 28, 2014
Minnesota Judicial Center Room G-06**

Members present:

Hon. John McBride, Chair	Amanda Jameson	Shannon Smith
Amie Ascheman	Jay Leidman	Jon Steinberg
Sharon Benson	Hon. Bethany Fountain Lindberg	Joanna Woolman
Gayle Borchert	Daniel Lovejoy	Ann Ahlstrom, Staff Attorney
Hon. Janet Barke Cain	Jessica Maher	Judy Nord, Staff Attorney
Julie Friedrich	Erin O'Brien	Aaron Zurek, Staff Attorney
Anne Tyler Gueinzus	Irene Opsahl	Patrick Busch, Staff Attorney
Susan Halpern	Hon. David Piper	
Hon. Mark Ireland	Hon. Heidi Schellhas	

Members absent: Hon. David Stras, Liaison Justice; Rhonda Morehead; Benjamin Stromberg; and Erin Sullivan Sutton

Guests present: Carla Heyl; Katie Sutton; and Karen Mareck

Welcome and Introductions

Committee chair, Judge John McBride welcomed all members and called the meeting to order.

October 14th Meeting Summary Approval

The Committee approved the October 14, 2014, Meeting Summary by consensus.

Review of proposed rule amendments

The committee reviewed and considered the proposed amendments to the Rules of Juvenile Protection Procedure and Rules of Adoption Procedure sequentially.

Rules of Juvenile Protection Procedure

Rule 32.02, subd. 3 (a): The proposed rule incorporates language agreed upon by the committee at the last meeting that service of the summons shall be “personally, by U.S. mail, through the E-Filing System, by Internet e-mail or other reasonable electronic form agreed upon by the party or attorney to be served, or as otherwise directed by the court.” A member questioned why the

committee settled on the phrase “reasonable electronic form” rather than “electronic means.” At the October 14, 2014, meeting, the committee reviewed proposed Gen. R. Prac. 14.01 (a) (7) where “electronic means” is defined and believed that the definition was too broad. A member commented that the proposed language only permits service via “other reasonable electronic form” when the party or attorney to be served agrees to the service, and therefore, the term “electronic means” would be appropriately limited. The committee agreed by consensus that “electronic means” should replace “reasonable electronic form” throughout the rules where proposed.

Another member asked why the proposed rule specifies service via “internet e-mail” instead of simply “e-mail.” Staff explained that the term distinguishes web-based e-mails from intra-branch emails or emails sent through/by the E-Filing System. The term appears in the draft proposed rules currently under consideration by the General Rules of Practice Committee. It was the consensus of the committee to track the language proposed by the General Rules of Practice Committee.

A member noted that the reference to “subdivision 3” in the proposed rule at line 373 should be changed to “subdivision 5,” as a previously agreed upon amendment renumbered the subdivision. The committee agreed and approved the following proposed amendments to Rule 32.02, subd. 3 (a):

“Unless the court orders service by publication pursuant to Rule 31.02, subd. ~~5-3~~, the summons and petition shall be personally served upon the child’s parents or legal guardian, and the summons shall be served personally, ~~or~~ by U.S. mail, through the E-Filing System, by Internet e-mail or other electronic means agreed upon by the party or attorney to be served, or as otherwise directed by the court upon all other”

Rule 32.02, subd. 3 (c): Staff asked whether the methods of service of the summons upon the parent and legal custodian in voluntary placement matters should be expanded. A member commented that the methods of service should be whatever is easiest and least expensive. It was the consensus of the committee to expand the service options and track the proposed language [hereinafter the “standard service language”] concerning methods of service in Rule 32.02, subd. 3 (a).

Rule 32.03, subd. 4: It was the consensus of the committee to track the standard service language and replace the phrase “reasonable electronic form” with “electronic means.”

Rule 32.04: The proposed amendment specifies “hand” delivery for service of the notice of subsequent hearing in court. A member questioned whether this addition was necessary. Members from court administration indicated that the addition will clarify in-court service and is a welcome amendment. The committee agreed to retain the addition of “hand.” The committee later agreed that “hand delivery” should not be used and, instead, the text should be changed to state “such notice shall be personally served by the close of each hearing.”

The committee discussed whether to retain the 5 and 10 day timelines for service via mail to in-state and out-of-state addresses. Some of the major points of the discussion included:

- The rule as a whole is designed to accomplish two things: (1) to encourage the court and the parties to set a date for the next hearing at the current hearing; and (2) to require that notice be delivered immediately following the hearing and in no event later than the specified deadline for mailed notice.
- When the rule was written, it was the intent of the committee to adopt the best practice of scheduling and giving notice of the next hearing at the current hearing, but also to ensure that all parties had enough time to plan for the next hearing and bring any necessary motions in a timely manner.
- One option is to eliminate that 5-10 day timeline altogether. The timeline was arbitrarily set by the committee when the rule was written. Eliminating the timeline altogether may create due process arguments regarding notice and opportunity to adequately prepare for hearings. But any such arguments could be appropriately raised to the court at the hearing.
- A member questioned whether this rule is really intended to accommodate the filing of motions. The rule concerns service of court notices and is unrelated to motion practice of the parties.
- A member suggested that the rule be amended to impose a 10 day timeline for mailed service. It was the consensus of the committee that this proposal would create an issue regarding the service of notice of the admit/deny hearing following the EPC hearing, which must be held within 10 days of the EPC hearing.

- To clarify that the rule is intended to encourage immediate service of the notice, a member proposed that the rule state that the notice shall be delivered “as soon as possible” at the close of the hearing. It was the consensus of the committee that this language would be too ambiguous and provide little guidance to court staff.
- The current language imposing a 5 and 10 day timeline for all service methods and mailed service to an out-of-state address, respectively, should be retained. The committee agreed to retain the 5 and 10 day timelines.
- For clarity, a member proposed that all references to “mail” should be revised to “U.S. mail.” The committee agreed to this proposal as well.

CONSENSUS: The committee approved the following amendment to Rule 32.04:

“For each hearing following the emergency protective care or admit/deny hearing, the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing. Unless otherwise ordered by the court, such notice shall be delivered served at by the close of each the current hearing. If not served by the close of the current hearing, the notice shall be served after the hearing by U.S. Mail, through the E-Filing System, by Internet e-mail or other electronic means agreed upon by the party or attorney to be served, or as directed by the court. or mailed If not served by the close of the current hearing, the notice shall be served at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is hand delivered at by the end close of the hearing, later written notice is not required.”

Rule 32.06: It was the consensus of the committee to propose no amendments to this rule permitting service of notices by electronic means to the Indian custodian and the Indian child’s tribe because ICWA requires service via registered mail.

Rule 35.03: The committee decided at the last meeting to continue to mandate that written admissions be signed under oath and notarized due to the importance of confirming the identity of the signer for such documents. A member questioned whether “under oath” should be defined to specify that a notarized signature is required. It was decided that the term has clear legal significance and that no definition is necessary.

Rule 38.11: The committee approved the following amendment to the rule:

“... The certified objection shall be supported by a ~~sworn~~ statement made under penalty of perjury stating of the party’s factual basis for the objection and may state other or additional facts on information and belief and argument that the

court should consider in making its determinations or orders.”

Rule 42.01: The committee approved the proposed typographical amendment to the rule.

Rule 42.15, subd. 4: It was the consensus of the committee to expand the service options and track the committee’s proposed standard service language in Rule 32.02, subd. 3 (a).

Rule 43.04, subd. 2: The committee approved the proposed amendment to subdivision 2 (b) permitting the petition to be “under oath or penalty of perjury” without objection or comment. The committee further agreed to expand the service options in subdivision 2 (d) and to track the committee’s proposed standard service language in Rule 32.02, subd. 3 (a).

Rule 43.04, subd. 3: The committee approved the proposed amendment, eliminating “sworn” from the rule without comment or objection.

Rule 43.05, subd. 1 (b) & (d): The committee agreed to expand the service options in subdivision 1 (b) & (d) and to track the committee’s proposed standard service language in Rule 32.02, subd. 3 (a).

Rule 44.02, subd. 2: The committee agreed to expand the service options and to track the committee’s proposed standard service language in Rule 32.02, subd. 3 (a).

Rule 48.01, subd. 4 (c): The committee agreed to expand the service options and to track the committee’s proposed standard service language in Rule 32.02, subd. 3 (a).

Rule of Adoption Procedure

Rule 2.01: The Committee agreed that the rules should not duplicate the General Rules where possible. Rather than define “Affidavit” in such a manner to permit signature under penalty of perjury pursuant to Minn. Stat. § 358.116, the rule should reference the General Rule of Practice where the term is defined.

Rule 7.01, subd. 2 (a) & (b): The proposed amendments would permit service of the petition on the Commissioner of Health through the E-Filing System. A member questioned whether the

applicable statute requires service via U.S. mail. Staff will look into this; if the statute does not prohibit other methods of service, the committee approves the addition of service through the E-Filing System. A member questioned whether personal service should also be added. It was the consensus of the committee that court administration does not have the resources to personally serve petitions on the Commissioner.

Rule 10.03: The proposed amendments replaces “mailed” with “transmitted.” This is a change being proposed globally by all rules committees to account for broader methods of service. The term encompasses both conventional and electronic service methods. A member questioned whether the term is defined in the General Rules of Practice; and if not, whether the term should be defined in the Juvenile Protection and Adoption Rules. The term is not defined in the General Rules of Practice. It was the consensus of the committee that the term is one of general understanding and common sense and that it need not be defined.

Another member noted that “serve” is just as broad as “transmit” and asked why the latter was chosen. The member speculated that the corresponding Juvenile Protection rule used “serve” rather than “transmit.” It was the consensus of the committee to use consistent terms and rule headings throughout the Juvenile Protection and Adoption Rules. Staff will review the rules and make the necessary changes in the next draft of proposed rule amendments.

Rule 13.03: The proposed amendment would permit service of subpoenas “by mail or other means upon agreement of the witness.” A member questioned whether a subpoena must be personally served to permit findings of contempt. It was determined that the rule already authorizes service “by mail” upon agreement, and that expanding the service options (upon agreement) would not affect the court’s ability to make findings of contempt. The committee agreed to expand the service options further than that proposed by staff and to track the committee’s proposed standard service language in Juvenile Protection Rule 32.02, subd. 3 (a).

Rules 15.02 – 20.03: The committee approved the proposed amendments to Rule 15.02 through Rule 20.03 without comment or objection.

Rule 25.01: A member noted that subdivision 4 should be renumbered subdivision 2 since the

proposed amendments strikethrough all of subdivisions 2 and 3. The committee agreed and approved all of the proposed amendments to Rule 25.01 without further comment or objection.

Rule 25.02:

Subdivisions 1, 2 & 4: The committee approved the proposed amendments without comment or objection.

Subdivision 3: A member proposed that the second sentence of subdivision 3 be moved first for clarity and that “unsuccessful” be replaced with “diligent” in the third sentence for consistency with an amendment proposed in the corresponding Juvenile Protection Rule. The committee approved both proposals.

Subdivision 5: The committee questioned why the proposed language provides that when “authorized or mandated by General Rule of Practice 14” documents “may or shall” be served electronically. A member noted that Rule 14 authorizes some filers to eFile/eServe and mandates others. It was the consensus of the committee that the proposed language is confusing and that “authorized” and “may” should be stricken and “mandated” and “shall” should be retained.

Rule 25.03: The committee approved the proposed amendments to the rule with the following modification: that the phrase, “reasonable electronic form” in the heading and body of the rule, be replaced with “electronic means.” Staff will modify the language accordingly in corresponding Juvenile Protection Rule 31.03.

Rule 25.06: The committee approved the proposed amendments to the rule with the following modification: that the phrase, “electronic form” be replaced with “electronic means.” Staff will modify the language accordingly in corresponding Juvenile Protection Rule 31.06.

Rule 29.03: The committee approved the proposed amendment to the rule, eliminated “sworn” in subdivision 2 (d) (2), without comment or objection.

Rule 30.01, subd. 2: The committee approved the proposed amendments to the rule and the following additional amendment to subdivision 2 (b) (4): “a copy of the child’s passport, including the United States visa indicating IR-3 or IH-3 immigration status.” A member noted that courts have declined to issue decrees where IH-3s were submitted. IH-3 or IH-4 category

visas are issued for children from a Hague Convention country. The IR-3 language must be retained because there will be countries who never adopt the Hague Convention.

Rule 31.04, subdivision 2: The committee approved several amendments to the language and format of Rule 31.04, subdivision 2 designed to clarify and simplify the rule, cross-referencing Rule 25.02 where appropriate.

Subdivision 2 (a): The committee approved the following amendment to the paragraph: “The ~~petitioner shall serve the~~ notice of hearing shall be served upon the child’s parents by personal service pursuant to Rule 25.02, subd. 1.”

Subdivision 2 (b): The committee noted that Rule 31.04, subd. 2 (b) contains language (e.g. a three week timeline for published notice) not contained in corresponding Rule 25.02, subd. 3 and that the Rule 25.02 contains a cross-reference to Rule 31.04, subd. 2 (b). The committee asked staff to redraft Rule 25.02, subd. 3 so that it incorporates the additional language from Rule 31.04 and to simply reference Rule 25.02, subd. 3 in Rule 31.04, subd. 2 (b), striking all superfluous language.

Subdivision 3: It was the consensus of the committee to renumber this subdivision to subdivision 4 and to amend the heading of the rule as follows: “~~U.S. Mail~~ Method of Service – Others.” The committee also agreed that subdivision 3 should be split into paragraphs (a) and (b). The current language of the rule will moved to paragraph (b). Staff will draft paragraph (a) to mandate service through the E-Filing System for Registered Users being served; staff will track language approved by the committee at the last meeting for the corresponding Juvenile Protection Rule.

Subdivision 4: It was the consensus of the committee to renumber this subdivision to subdivision 3 and to amend the heading of the rule as follows: “~~Registered Mail~~ Method of Service – Indian Tribes.”

Rule 34.06: The committee discussed whether or not to eliminate the requirement that a certified copy be provided by court administration. A court administration member noted that although there is not currently an electronic solution for court administration to provide electronic certified copies with a raised seal, that the distinguishing feature court administration looks for in electronic documents is a notation indicating that the document is a certified copy. It was the consensus of the committee to retain the certification language.

Another member noted that the second sentence of the rule, requiring service to be completed “in a manner that maintains confidentiality of confidential information,” is confusing. A court administration committee member indicated that the certified copies are simply placed in an envelope and mailed like any other document. It was the consensus of the committee that the second sentence of the rule is confusing, meaningless, and should be stricken from the rule.

Rule 35.05: The committee approved the amendment to Rule 35.05, subd. 6, without comment or objection.

Rule 37.03 & Rule 38.01: The committee approved the proposed amendments to Rule 37.03 and Rule 38.01 without comment or objection.

Rule 45.03: It was the consensus of the committee to propose no amendment to the rule.

Rule 49.03: The committee approved the proposed amendment to Rule 49.03 and the following additional amendment: that “a certified copy of” at lines 1122-1123 be stricken from the rule to account for transfer of the file in an electronic world. Staff will review Rule 49.03 and determine if additional amendments are necessary as a point of clarification to court administration regarding the transfer of the electronic file where a change of venue is ordered.

Rules of Guardian ad Litem Procedure

It was the consensus of the committee to propose no amendments to the Rules of Guardian ad Litem Procedure.

The committee completed its review of the draft amendments proposed by staff. In light of the numerous changes to the rules, staff will double-check that all cross-references remain current and that all changes agreed upon by the committee are made.

Juvenile Protection Rule 37 – Out-of-Home Placement Plans

At the last meeting, the committee asked Staff Attorney Ann Ahlstrom to draft a proposed

amendment to Juvenile Protection Rule 37.02 restricting access to children's health and education records submitted in out-of-home placement plans so that only the parties to the case receive access. Federal law mandates that education and medical records, including records regarding the use of psychotropic medications, be attached to case plans, and Minn. Stat. § 260C.212 has been amended to reflect this requirement. Ann Ahlstrom presented the proposed amendment to the committee. The new rule would restrict access to the child's education, health, and mental health information and records submitted in the out-of-home placement to the parties only and require the portions of the out-of-home placement plan containing such information and records to be clearly labeled "inaccessible to the public." Committee members had the following comments about the proposed rule amendment:

- It would be less of a burden for court staff if the restricted records were submitted as an attachment to the out-of-home placement plan rather than within the case plan so the records could be easily identified and coded as confidential.
- Proposed subdivision 3 (b) (2), requiring the restricted information to be clearly labeled "inaccessible to the public" is an unnecessary requirement. Electronic court records are coded with a public access classification. If the restricted information is submitted as an attachment to the out-of-home placement plan, it can be classified as confidential. Moreover, Rule 8 contains a laundry list of inaccessible items with no similar obligation to affix such a label.
- Proposed subdivision 3 (b) (3), referencing the agency's statutory duty to provide a complete copy of the out-of-home placement plan to various individuals, does not belong in the procedural rules of the court.

CONSENSUS: It was the consensus of the committee to strike paragraphs (b) (2) and (3) from the proposed language; the committee approved paragraph (b) (1).

Discussion Item: Electronic Access to Juvenile Protection Records

Judge McBride commented that at the last meeting the committee had a lengthy policy discussion regarding electronic accessibility to juvenile protection records. It was the consensus of the committee after that discussion to limit electronic access to the Register of Actions ("ROA"). The committee tabled the question of whether the ROA should be accessible only via Courthouse View or if it should also be available via Remote Access. If the portal had the ability to mask children's names and dates of birth, many members would support Remote Access to the

ROA. Staff spoke with representatives from Tyler and determined that children's names could not be masked under current technology, but that the system could be upgraded to do so. Unfortunately, such an upgrade will not be functional until 2018.

Judge McBride explained that since the committee's last meeting the Public Access Committee met and had a similar discussion concerning the electronic accessibility of public court records. That committee may take an expanded approach and recommend that public documents in all case types be made electronically accessible. Judge McBride asked the committee to reconsider whether there was a way to make public documents in juvenile protection cases electronically accessible. He framed the discussion in two parts: (1) Could the ROA be made remotely accessible without the functionality to mask children's names; and (2) Should public documents in juvenile protection matters be electronically accessible? The committee considered each question in turn. Major points of the committee's discussion of the first question included:

- The committee and the Supreme Court already considered and decided this question when it made juvenile protection proceedings and most of the documents open to the public. Preventing electronic access to the ROA and those records would be a step backwards.
- Prohibiting electronic access to the ROA will be burdensome on court staff. Juvenile Protection is the only area where the proceedings and documents are public but the rules prohibit electronic access. This creates confusion. It would be a lot easier if there was one consistent policy and treatment of records.
- "For what purpose" should electronic access be granted? Open disclosure and transparency is one thing, but will expanding access cause more harm than good to children and families? Can the records be adequately protected from data miners?
- If the public already has access in other forms (i.e. coming to the courthouse and requesting access), there is no reason to compromise the privacy interests of children by making records accessible electronically.
- When the juvenile protection open hearings subcommittee considered this issue previously, it identified a distinction between attending and hearing the information in court and copying/carrying documents away. The distinction is perhaps more significant in an electronic world.
- The child has a compelling interest in keeping the documents off the Internet. In

practice, no one comes to court to listen to the hearings. If all barriers to accessibility are removed, the records will be published on the Internet and accessible by future employers and landlords. The public's interest in accessibility should not outweigh the right of children to a genuine sense of privacy and self-preservation.

- The ROA is the most sanitized document in the court record. Most individuals who want access to the ROA are interested in the case and the child's life. Allowing access to the ROA might increase the involvement of participants in the case and in the child's life. The ROA is the least damaging document to the child.
- There is nothing in the current rules that makes the child's identity nonpublic, with the exception of cases where the child is an alleged victim of sexual assault or sexual abuse. Even if the child's name cannot be masked, interested persons will still be able to infer the identity of the child from the parents' names.
- Child victims of sexual assault cannot be identified per statute and Rule 8.04 (j). If there is no way to mask children's names in the ROA, child victims' names will be unprotected. In opposition to this point, another member commented that it is very unlikely that the ROA would contain any detail identifying the child as a victim or alleged victim of sexual assault; accordingly, there is no reason to restrict access.
- Although the child's name cannot be masked in MNCIS, the child's address can be coded as confidential by court staff. Thus, the court has the ability to maintain the confidentiality of the child's foster care placement address.
- Rule 8 presumes that the child's name is public. On that basis the ROA should be electronically accessible.
- The primary concern is not data miners but the friends and classmates of the child. Opening access to technologically savvy children will subject the child to bullying and additional trauma.
- The committee should request a legal opinion from Legal Counsel on whether allowing public access to the ROA without masking a child's name will conflict with the statutory prohibition on disclosing the identity of child victims of sexual assault.

DECISION: Following the discussion, Judge McBride put the matter to a vote. A majority of the committee (12 members in support; 5 members in opposition) supported making the ROA electronically accessible at the Courthouse even if the child party's name cannot be masked.

And a majority of the committee opposed (7 members in support; 9 members in opposition) making the ROA remotely accessible under such circumstances. The Committee's decision is contingent on receiving a legal opinion from the branch's Legal Counsel Division opining that permitting electronic public access to the ROA will not conflict with the statutory prohibition on disclosing the identity of child victims of sexual assault.

The committee next discussed whether public documents in juvenile protection proceedings should be electronically accessible. It was the consensus at the last meeting that no electronic access to documents should be permitted. Major points of this discussion included:

- One option the committee could consider is to follow the approach of General Rule of Practice 11, which requires filers to redact restricted identifiers prior to filing. The committee could propose that Rule 8 be amended to require filers to certify that all documents filed contain no confidential information and impose sanctions for violations. If a document contains confidential information, the filer could classify the document as confidential. A member noted that this proposal is different from Rule 11 which places the burden of redaction on the parties. The proposal merely requires certification and puts the burden on court staff to identify the confidential information and redact. Another member commented that filers would error on the side of caution and file every document as confidential whether or not it contained confidential information. It was the general consensus of the committee that such a rule requiring certification would be ineffective.
- In the alternative, the committee could propose a rule like General Rule of Practice 11 and require parties and filers to redact all confidential information from court filings. The committee considered and rejected this proposal at the last meeting. Juvenile protection records are already complicated enough; requiring parties to redact confidential information and file the information on a separate confidential document would further complicate pleadings and reports, clutter the record, cause confusion for court staff, and create a new level of motion practice concerning disputes over the redaction requirements.
- In family court proceedings, the GAL report is filed as confidential; shouldn't this also be the case in juvenile protection proceedings.

- From the standpoint of the public, prohibiting electronic access looks like the court is withholding information. The records are public and accessible conventionally at the courthouse. Why shouldn't the public also have access to documents electronically at the courthouse terminal? There is no rational reason to prohibit access at the courthouse.
- When the committee recommended that juvenile protection records be opened to the public, it was for public accountability and transparency reasons. When the committee later recommended that the public documents and records be excluded from electronic accessibility, it was to prevent expansive availability of the records over the Internet to protect children from further traumatization. Children are a vulnerable population. Nothing has changed since the committee last considered the issue.
- If the committee feels as strongly as it does that juvenile protection matters are unique, then it needs to make a compelling argument why juvenile protection records are any different from contested custody matters in family court. A member responded that in family court, the parents voluntarily bring their dispute to court, but that in juvenile protection matters, the government has intervened and the child and parents have come to court reluctantly.
- The Public Access Committee has had similar discussions regarding electronic accessibility to public court records. It is the general consensus of that committee that court staff should not be responsible for redacting documents and that electronic access to public records should be expanded. The committee recognizes the special circumstances of cases involving children and government intervention in juvenile protection cases, but family and civil commitment cases have similar elements, and the records in those matters are treated very differently.

CONSENSUS: It was the consensus of the committee that electronic access to public documents in juvenile protection matters should continue to be restricted.

Next Steps:

Staff will put together a final draft of proposed rule amendments and distribute the draft to the committee for review and discussion via email. The committee members should review the draft and submit any comments by 12:00 p.m. Monday, November 3rd. Members should send their comments to the entire committee. Staff will make any necessary modifications to the draft prior

to distributing it to the public for comment. Depending upon the feedback received and the committee's email discussions, the committee may not need to meet again. The next meeting is scheduled for November 18, 2014. Members should plan on meeting this date unless they hear otherwise from committee staff.

There being no further business, the meeting was adjourned.

MEETING SUMMARY

**Minnesota Supreme Court Advisory Committee
on the Rules of Juvenile Protection Procedure and Adoption Procedure
Tuesday, November 18, 2014
Minnesota Judicial Center Room G-06**

Members present:

Hon. John McBride, Chair	Susan Halpern	Shannon Smith
Hon. David Stras, Liaison	Hon. Mark Ireland	Jon Steinberg
Amie Ascheman	Amanda Jameson	Joanna Woolman
Sharon Benson	Hon. Bethany Fountain Lindberg	Ann Ahlstrom, Staff Attorney
Gayle Borchert	Daniel Lovejoy	Judy Nord, Staff Attorney
Hon. Janet Barke Cain	Irene Opsahl	Aaron Zurek, Staff Attorney
Julie Friedrich	Hon. David Piper	Patrick Busch, Staff Attorney
Anne Tyler Gueinzus	Hon. Heidi Schellhas	

Members absent: Jay Leidman; Geri Krueger; Jessica Maher; Rhonda Morehead; Erin O'Brien; Benjamin Stromberg; and Erin Sullivan Sutton

Guests present: Carla Heyl; Katie Sutton; Paul Regan; Sarah Novak; Deanna Dohrmann; Karen Jaszewski; Peggy Kuisle; and Margie Aranda.

Welcome and Introductions

Committee chair, Judge John McBride welcomed all members and called the meeting to order.

October 28th Meeting Summary Approval

The Committee approved the October 28, 2014, Meeting Summary by consensus.

Review of Proposed Amendments to Juvenile Protection Rule

The committee reviewed the proposed amendments to the Rules of Juvenile Protection Procedure sequentially.

Rule 2.01: A member questioned whether “government subscriber” should be defined in Rule 2.01. Staff explained that Proposed Public Access Rule 8, subd. 4, states “Notwithstanding other rules, access to non-publicly-accessible records, including remote and bulk access, by criminal justice and other government agencies shall be governed by order or directive of the supreme court or its designee.” The supreme court has delegated to the State Court Administrator the authority to develop policies related to access to non-public documents by government agencies. The State Court Administrator has issued Policy 800, which

references “government subscribers” rather than “government agencies.”_Consistent with the Public Access Rules, the proposed amendment to Juvenile Protection Rule 8.06 uses the term “government agency” to describe who will receive remote and bulk access to nonpublic records. It was the consensus of the committee that, because “government subscriber” is a term used exclusively in Policy 800, it is unnecessary to define the term in the rules.

Rule 3.06: The proposed amendment expands the applicability of the General Rules of Practice to Juvenile Protection proceedings by explicitly stating that General Practice Rules 1-15 apply in Juvenile Protection proceedings. The current rule only specifically references General Practice Rule 10, which concerns enforcement of tribal court orders and judgments. A member questioned whether General Practice Rule 4, which governs media requests for audio/video coverage in the courtroom, should apply in Juvenile Protection proceedings. It was determined that media audio/video courtroom coverage is governed by separate supreme court order and that Rule 4 does not permit audio/video coverage in Juvenile Protection proceedings. Another member questioned whether General Practice Rule 3, which would impose requirements for seeking *ex parte* relief beyond that required by the Juvenile Protection Rules. It was the consensus of the committee that Rule 3 should not apply in Juvenile Protection proceedings and that staff should review General Rules 1-15 and determine whether any other rules directly conflict with the Juvenile Protection Rules. Staff will perform a side-by-side comparison of General Practice Rules 1-15 and the Juvenile Protection Rules and exclude, as inapplicable, all conflicting General Practice Rules.

Rule 10: A member identified a typo in Line 698, noting that “by” needed to be added before “U.S. Mail.”

Rule 15.02: Staff questioned whether the committee’s standard service language should be amended throughout the Juvenile Protection rules to differentiate between service upon Registered Users and Non-Registered Users. The proposed amendment to Rule 15.02 contains such a distinction. It was the consensus of the committee that such a distinction should be made in the standard service language throughout the rules. Staff will make the necessary amendments.

Rules 21.01, 28.02, 35.03: “Child engaged in prostitution” has been amended to “sexually exploited child” to reflect a statutory change in the term. The committee approved of this change by consensus. The committee also discussed whether sexually exploited child matters should continue to be lumped together with habitual truant and runaway child matters as far as designating the child as a party and requiring the child to admit. It was the consensus of the committee that such a change would exceed the committee’s charge under the eCourtMN initiative and that the issue should be flagged for consideration when the committee considers substantive amendments in the future.

Rule 31.01: A member suggested that “is required to” in line 822 be replaced with “must” for brevity. Because the proposed language is consistent with that used in the General Rules, the committee agreed

to not make the suggested change. Staff noted that the committee may want to reconsider striking subdivision 2 from the rule, which addresses filing by facsimile because at its last meeting the Civil Procedure Rules Committee decided to maintain facsimile filing as an option for attorneys and pro se parties until electronic filing is available and mandated statewide in July 2016, and to maintain facsimile as an option for pro se parties indefinitely. It was the consensus of the committee to follow the lead of the Civil Procedure Rules Committee and maintain facsimile filing as an option for any attorney or party who is not mandated to electronically file/serve. A member noted that line 831 should be modified so that facsimile filing is only permitted for documents “not required to be filed through the E-Filing System.” The committee agreed that such amendment was necessary.

Rule 31.02: A member questioned whether the phrase, “shall have the same effect as the published notice,” in line 863 could be stricken from the rule, as it is not clear what the phrase means. Another member opined that such an amendment would exceed the scope of the committee’s eCourtMN charge. The committee agreed and directed staff to flag the issue for consideration when substantive amendments are considered in the future. Another member questioned whether “mandated” in line 888 (subdivision 4) should be replaced with “required.” It was the consensus of the committee to propose whatever term is being proposed by the other rules committees for consistency. Staff will review the proposed rules of other committees and make any necessary changes throughout the juvenile protection and adoption rules.

Rule 31.03: A member commented that a written agreement should be required before permitting service by electronic means. There is concern that without a written agreement there will be no concrete documentation of the agreement to service by electronic means. It was the consensus of the committee to require a written agreement or an agreement on the record so there is objective proof confirming the agreement. The committee approved amendment to lines 924-25 as follows: “Unless these rules require personal service or service through the E-Filing System, by agreement of the parties made in writing or on the record, any document may be served by ~~facsimile transmission~~ electronic means. ~~The facsimile shall have the same force and effect as the original.~~”

Rule 31.06: Staff explained that the proposed amendment to rule 31.06 conforms to a corresponding rule being proposed by the Civil Procedure Rules Committee regarding completion of service. Staff received two comments questioning the meaning of the term “completion.” A member suggested that the rule provide that service is complete “upon successful completion” of the electronic transmission. It was the consensus of the committee to propose a rule consistent with the rule being proposed by the civil rules committee, but to include the advisory committee comment drafted by staff that explains the meaning of the term, “completion.”

Rule 32.04: A member commented that the proposed amended language is circular and that the phrase “by close of the current hearing” is ambiguous. Another member suggested that the word “next” be included immediately before the word “hearing” in line 1061. It was the consensus of the committee to maintain the proposed language as written, but to add “next” where appropriate in line 1061 and to move

the last sentence of the rule to an advisory committee comment. Staff will draft a comment explaining that service of the notice by the end of the current hearing is the best practice but that the rule recognizes in some instances such service is not possible (e.g. a date for the next hearing cannot be set at the current hearing because of scheduling issues).

Rule 38.10: A member question whether the proposed amendment to the rule makes it clear that the phrase “under oath or penalty of perjury” means that the statement can either be sworn/notarized or signed under penalty of perjury under Minn. Stat. § 358.116. The committee agreed that the language should be made clear by referencing the statute. Staff will review the Juvenile Protection and Adoption Rules and make the change where necessary. The committee discussed whether, when referencing the statute, “under” or “pursuant to” should be used. It was the consensus of the committee to use whichever term other rules committees are proposing for consistency.

Rule 44.01: A member commented that at line 1393 a long cite to the statute is used but that in other rules a short cite is used. It was the consensus of the committee to use the short cite throughout. Staff will review the rules and make the change where appropriate.

Public Access Committee Update

Staff reported that the Public Access Rules Committee met on November 13th. It was the consensus of that committee to propose amendment to Public Access Rule 1 so that it provides: “To the extent that there is any conflict between these rules and other rules, these rules shall govern.” The committee also favored a proposal that would make all public documents electronically accessible at the courthouse and certain categories of documents remotely accessible according to case type. That proposal is as follows:

1. Post conviction criminal and civil cases:
Calendars, registers of action, and public documents and data are remotely accessible.
2. Family law, pending conviction criminal:
Registers of action and calendars are remotely accessible, as are public court orders.
3. CHIPS, civil commitment, and paternity:
No remote access.

The Public Access Committee has directed staff to draft a proposed rule that incorporates the above outline of case types and treatment of documents. The committee will consider the proposal at its next meeting.

Judge McBride explained that at the last meeting, this committee decided to limit electronic access to Juvenile Protection records to the register of actions (“ROA”) at the courthouse. The Public Access Committee is working under the principle that all public documents should be electronically accessible at the courthouse, as the court file will no longer be maintained in paper form. To attain the greatest benefit from the transition to electronic filing, court staff will generally not be fielding document requests or

printing electronic documents. Juvenile Protection is the only area that prohibits electronic access to public documents. If this committee has concerns about making certain public documents electronically accessible, it would be the preference of the Public Access Committee that such documents be designated as confidential or nonpublic, so that public documents are treated consistently across case types.

Demonstration of MPA Remote Access, MPA Courthouse Access, and eFS Access

Staff Attorney Paul Regan gave a detailed presentation on the capabilities of MPA Remote, MPA Courthouse, eFS and MGA.

eFS

In eFS, a registered user can only access a case by file number. Although a child's name appears in the party tab, no contact information is provided. A registered user can only access documents he/she has filed.

MPA Remote

Searches can be limited to party name, attorney name, or case number. Currently no documents are available for viewing or download via MPA Remote in any case type, and no Juvenile Protection records (i.e. ROA) are available in light of Juv. Prot. R. 8.06. The system is capable of displaying only a party or child's initials or a generic identifier such as "child 1." Minor settlement cases currently only display initials.

MPA Courthouse

Searches can be limited to party name, attorney name, or case number. Participant information can be masked and not displayed. Public documents are viewable by clicking on the blue highlighted link to the document in the ROA.

MGA ("Minnesota Government Access")

Minnesota Government Access ("MGA") is a separate portal developed for court partners. Juvenile Protection records are currently classified as Confidential 2 and not available via MGA. If the proposed Juvenile Protection Rules make certain records or documents accessible through MPA Courthouse, certain records and/or document will need to be reclassified from Confidential2; such reclassification would increase access to court partners through MGA.

A member asked staff to explain the difference between document classifications in MPA Courthouse and Remote. Staff provided the following overview of the court's document security classification policy: There are five document classifications. Public 1 documents are public court generated documents such as orders and judgments that are available through MPA Courthouse and will be made available via MPA Remote when the technology and resources permit. Public 2 documents are public documents filed by parties that can be made available to the public through MPA Courthouse but not through MPA Remote. Confidential 1 documents are not accessible to the public in electronic form but is accessible by government agencies or court partners through MGA in accordance with Policy 800 (a). Confidential 2 documents are documents that are not accessible to the public or government partners in electronic form. Only court staff can access these documents. Sealed documents are documents that have been sealed by court order and only accessible by order or direction of the court.

Another member questioned whether court-appointed attorneys would qualify as a “government agency or subscriber” under Policy 800 and have access to Confidential 1 documents through the MGA portal. Staff explained that a court-appointed attorney would receive access to certain documents and cases in MGA if he/she had a contract with the county. Otherwise the court-appointed attorney or private attorney would not have access. Members commented that this presents an equal access issue and provides an unfair advantage to government attorneys. Staff explained that this is an issue that has been discussed at length by other committees and internally within the branch. In rolling out access, the branch must start somewhere; government partners are a logical starting point given their involvement in the vast majority of cases.

Discussion Item: Electronic Access to Juvenile Protection Records

Judge McBride asked the committee to reconsider its decision at the last meeting to limit electronic access to Juvenile Protection records to the ROA through MPA Courthouse in light of the Public Access Committee’s guiding principle that public documents should be electronically accessible across all case types. He framed the discussion in three parts: (1) Would using identifiers such as initials or generic identifiers such as “child 1” and “child 2” in cases where a child is a party alleviate the committee’s concerns regarding child name searches? (2) Should access to public documents and records be limited to MPA Courthouse or expanded to MPA Remote? (3) What, if any, Juvenile Protection documents currently classified as public need to be reclassified as nonpublic or confidential? The committee considered each question in turn.

1) Child-Party Identifiers

Judge McBride explained that he spoke with court staff and came up with one possible solution: A child party could be identified by his/her initials or a generic identifier such as “child 1” in the MNCIS party field and identified by name in the participant field. This would prevent searches by the child-party’s name and mask the child’s name from the ROA. The discussion on this proposal was extensive. Some of the points made included:

- A Party ID or unique numerical identifier is given to each party and participant in MNCIS. Currently, MNCIS does not allow a party and participant to have the same Party ID; therefore, the two cannot be linked together and court staff will be required to enter a case comment explaining that child identified by initials or generic identifier as a party is the same child identified by name as a participant.
- This proposal would eliminate the concern over data miners.
- If the rules designate a certain child as a party, doesn’t the MNCIS data entry, which is a court record, need to be consistent with the rules?
- The proposal would only be a temporary workaround until the technology evolved to permit masking of the child’s name.
- If a generic identifier (“Child 1”) is used, court staff will be prevented from searching Juvenile Protection records by child name. Using initials will not prevent a search by child’s initials but will require additional steps by court staff to confirm that the case is the correct case.

- In Ramsey County, orders are prepopulated with MNCIS party entry data. Using generic identifiers will eliminate any benefit of the automated system and require law clerks/judges to re-enter the child's name.
- To close a case, court staff must enter a disposition for the child. A child can only have one disposition. When listed as both a party and participant, one will not have a disposition. This will throw-off placement data provided to DHS.
- A second option is to simply make the child's name confidential and require that the child be identified solely by initials on all pleadings, documents, and orders. To comply with audit requirements under Title IV, the child's full name would need to be disclosed in a separate confidential information form attached to and incorporated by reference within all placement orders. This option may be preferable to the party/participant MNCIS workaround, as it will be less work for and confusion to court staff.
- A third option is to only list a child-party as a participant and include a comment in MNCIS that the child is really a party. This option will require court staff to identify that the child is in fact a party and manually send out notices and orders, which would be an administrative nightmare for court staff.
- A fourth option is to make any case where the child is a party a confidential case type so that the case is not searchable and nothing is available electronically. When the technology permits masking of child-party names, the case can be made public. A member questioned whether a case could be classified as public or confidential by court staff when it is first opened. A court administration member indicated that court staff had the ability to make such a classification. If an attorney, party, or member of the public wished to access the file, he/she would need to request access from the court at the counter.

CONSENSUS: It was the consensus of the committee that in cases where the child is a party or becomes a party, the case shall be classified as a confidential case and no documents or records in the file shall be accessible through MPA Courthouse or MPA Remote. All other cases, where the child is a participant, shall be classified as public and electronically accessible.

2) *Remote Access vs. Courthouse Access*

At the last meeting, a majority of the committee voted to permit electronic access to the ROA through MPA Courthouse but to prohibit access to all juvenile protection records through MPA Remote. The current proposal under consideration by the Public Access Committee provides that Juvenile Protection records will only be accessible via MPA Courthouse. Justice Stras suggested that since both committees appear to be on the same page, unless the Public Access Committee pivots on its position, there is no need for the committee to reconsider allowing access through MPA Remote. The committee agreed.

3) *Document Classification*

The committee next considered what, if any, Juvenile Protection documents currently classified as public need to be reclassified as nonpublic or confidential? Staff noted that the Public Access Committee has already determined that Social Worker reports and Guardian Ad Litem reports should be classified as confidential documents across all case types. Judge McBride explained that the committee could request an exception for Juvenile Protection cases and maintain such reports as public. He proposed three

alternatives for the committee's consideration: (1) prohibit public access to all documents by making them confidential;; (2) limit public access to the petition and orders and make all other documents confidential; (3) require parties to redact confidential information from public documents (Rule 8.04) similar to that required for restricted identifiers in Gen. Prac. R. 11 and submit the confidential information on a separate confidential information form. The committee's discussion on this topic was extensive. Some of the key points made included:

- A member commented that she could embrace the Rule 11 – type option but voiced concern over proposed Public Access Rule 4, subd. 4 (d), which appears to prohibit reference to or disclosure of confidential information in Juvenile Protection matters in argument, pleadings, and testimony. The committee reviewed Public Access Rule 4, subd. 4 (d) and determined that the rule likely only prohibits reference to or disclosure of certain protected information in Juvenile Protection Rule 8.04 (the rule references Juv. Prot. R. 8.01; this appears to be a typo and it is likely the Public Access committee intended to reference rule 8.04), such as HIV test results or information that would identify a minor victim of sexual abuse. The committee will ask the Public Access Committee for clarification.
- The committee already considered the redaction approach and rejected it. A petitioner is currently required to redact the petition under Rule 33.01, and the rule is rarely followed. Court administration cannot be expected to perform the redactions.
- The General Practice Rules Committee is proposing an amendment to Rule 11 that would require filers to certify that every filing does not contain restricted identifiers. The Civil Rules Committee is considering imposing automatic sanctions for violations brought to the attention of the court.
- The Rule 11 redaction requirements are being followed in family court matters; it seems logical that similar requirements would be effective in Juvenile Protection matters.
- A member commented that she practices family law and that the redaction requirements took some getting used to but that she performs the required redactions with ease.
- Only a limited amount of information will need to be redacted under Juvenile Protection Rule 8.04. An attorney or party can reference or disclose in argument or pleadings records made nonpublic under Rule 8.04. The rule only prohibits disclosure of a small amount of nonpublic information.
- A member proposed that, as a starting point, the committee could review all documents filed in Juvenile Protection matters and assign a confidentiality classification to each document. The committee ultimately decided that such an approach is not ideal as such an approach would require Juvenile Protection to move from documents which are presumptively public with nonpublic exceptions to documents that are presumptively nonpublic with public exceptions..
- A member voiced support for a Rule 11-type solution and suggested that social worker and GAL reports be made confidential. Such reports often contain the greatest amount of sensitive and confidential information necessitating redaction. Requiring social workers and GALs to redact will be overly burdensome. In opposition, another member commented that making such reports

confidential is a tremendous step backwards from the decision to open Juvenile Protection records and hearings. Social worker and GAL reports constitute the vast majority of substantive information filed and the bulk of the case; if the reports are made confidential, public accountability interests will be compromised.

CONSENSUS: Following the discussion, it was the consensus of the committee to adopt a Rule 11 – type approach and require filers to redact confidential information from all public filings. A majority of the committee (7 members) supported a Rule 11 approach where the social worker and GAL reports are made confidential; a minority of the committee (6 members) supported a Rule 11 approach where the social worker and GAL reports remain public documents. It was the consensus of the committee that the rules should give the district court (presiding judge) discretion to grant public access to any nonpublic report or document filed in Juvenile Protection matters. Giving the presiding judge such discretion on a case-by-case basis will permit public oversight in exceptional cases.

A member reiterated her concern over proposed Public Access Rule 4, subd. 4 (d). The committee agreed that the proposed language needs clarification. Judge McBride will send a letter to the chair of the Public Access Committee requesting that the language be modified so it only makes the following data elements in Juv. Prot. R. 8.04 inaccessible: Juv. Prot. R. 8.04 (b, d, e, j, l, and m). Judge McBride will also request that the Public Access Committee eliminate reference to Juvenile Protection Rule 8.05 in Public Access Rule 4, subd. 1 (l) (D), as the proposed rule could be interpreted to prohibit access to exhibits admitted in Juvenile Protection hearings or trials.

Review of Proposed Amendments to Rules of Adoption Procedure

The committee reviewed the proposed amendments to the Rules of Adoption Procedure sequentially. Staff will make a comprehensive review of all Juvenile Protection and Adoption Rules to ensure consistent language throughout.

Rule 7: Staff asked the committee whether language should be added to Rule 7.01, subd. 2 (a), specifying that court administration staff may only serve the petition on the Commissioner of Health via the E-Filing System if the Commissioner has the technical capacity and resources to accept service in such a manner. The Committee agreed to include the clarifying language in the rule.

Rule 25.02: Staff will review the citation to the General Rules of Practice in the proposed advisory committee comment to ensure the citation is correct.

Rule 25.06: Staff will review the proposed language and ensure that it is consistent with the corresponding Juvenile Protection rule.

Rule 31.04, subd. 3: A member questioned whether the court administrator is responsible for providing notice to the child's Indian tribe. It was the consensus of the committee that it is not the court administrator's obligation to serve the notice; it is the petitioner's.

Rule 49.03(b): A member proposed that the rule provide that court administration staff may make one certification that all documents transferred are certified copies rather than certifying each document individually. The committee agreed to this proposal.

Next Steps:

Staff will put together a final draft of proposed rule amendments and distribute to the committee for review and discussion via email. The committee members should promptly review the draft and submit comments via email. Members should send their comments to the entire committee. Staff will make any necessary modifications to the draft rules prior to incorporating it into a draft report. If committee members have specific language they want included in the report, they should send to the staff for inclusion. Staff will circulate a draft report via email, and members should review and submit any comments/proposed modifications via email. The next meeting is scheduled for December 11, 2014. Judge McBride is hopeful that this meeting will be unnecessary, but members should reserve the date in the off-chance a meeting becomes necessary.

Judge McBride thanked members for their attention and participation. There being no further business, the meeting was adjourned.

MEETING SUMMARY

**Minnesota Supreme Court Advisory Committee
on the Rules of Juvenile Protection Procedure and Adoption Procedure
Thursday, December 11, 2014
Minnesota Judicial Center Room G-06**

Members Present:

Hon. John McBride, Chair	Amanda Jameson	Shannon Smith
Hon. David Stras, Liaison	Geri Krueger	Jon Steinberg
Sharon Benson	Jay Liedman	Ben Stromberg
Hon. Janet Barke Cain	Daniel Lovejoy	Ann Ahlstrom, Staff Attorney
Hon. Bethany Fountain Lindberg	Jessica Maher	Aaron Zurek, Staff Attorney
Julie Friedrich	Erin O'Brien	Patrick Busch, Staff Attorney
Anne Tyler Gueinzus	Hon. David Piper	
Susan Halpern	Hon. Heidi Schellhas	

Members Absent:

Aimee Ascheman	Ronda Morehead	Joanna Woolman
Gail Borchert	Irene Opsahl	Judy Nord, Staff Attorney
Hon. Mark Ireland	Erin Sullivan Sutton	

Welcome and Introduction:

Committee chair Judge John McBride welcomed all members and called the meeting to order. He explained that staff attorney Judy Nord was absent due to an immediate family member's serious illness, and that staff attorneys Aaron Zurek and Patrick Busch would fill in for her.

Review of November 18, 2014 Meeting Summary:

The committee members approved the November 18, 2014 meeting summary by consensus without discussion.

Presentation on Proposed Amendments to the Rules of Guardian ad Litem Procedure:

Sue Alliegro and Judge Paul Nelson from the State Guardian ad Litem Board presented several proposed technical changes to the Guardian ad Litem procedural rules. They explained that the Guardian ad Litem program had originally been part of the Judicial Branch, but, pursuant to a 2010 statutory change, the program was moved from the Judicial Branch to a stand-alone entity to eliminate the possibility of a conflict of interest arising from the fact that Guardians ad Litem are often parties to actions. The Rules of Guardian ad Litem Procedure have not yet been

updated to reflect this change. The GAL Board submitted proposed amendments to the Supreme Court in 2012, but they were not considered at the time due to a moratorium on rulemaking. The requested updates are technical, not substantive, in nature.

The committee members reviewed the proposed technical changes. Points of discussion included:

- The heading of Rule 904 would need to be changed. The committee reached consensus on a change.
- There have been increasing numbers of disgruntled litigants, which has been hard on Guardians ad Litem.
- There has been ongoing public discussion about the proper role of Guardians ad Litem, such as on the Carver County Corruption Blog.
- Guardians ad Litem are needed to advocate for mentally ill self-represented litigants.
- The role of Guardians ad Litem needs to be consistently defined. They are not case managers.

The committee reached consensus on adopting the proposed technical amendments:

- Changed “child” protection matter to “juvenile” protection matter;
- Changed “Office of the State Court Administrator,” “chief judge of the judicial district,” and “Judicial Council” to “State Guardian Ad Litem Board”;
- Changed “Guardian Ad Litem Program Standards” to “Guardian Ad Litem Program Requirements and Guidelines (Non-Statutory)”;
- Deleted references to “contract” and “non-contract” guardians ad litem; and
- Nonsubstantive format changes

Discussion on Public Access:

Chair Judge McBride stated that he had sent a letter to the chair of the Public Access committee containing recommendations from the Juvenile Protection Rules Committee. The Public Access committee adopted the recommendations. Public Access Committee staff attorney Mike Johnson addressed the Juvenile Protection Committee briefly on the status of the Public Access Rules. A committee member inquired as to the availability of masking cases; staff attorney Johnson explained that the technology available for masking cases in EFS was different from the technology available for masking cases in the MPA public access system. The committee

member expressed concern that Tyler Technologies was not able to effectively integrate its products. The committee member also called attention to inconsistencies in the citations between the Public Access rules and the Juvenile Protection Procedure rules. Staff attorney Johnson stated that the inconsistencies resulted from renumbering of the rules, and that the rules would be examined to ensure that there was consistency.

Review of proposed revisions to the Juvenile Protection Procedure Rules:

Chair Judge McBride and staff attorney Aaron Zurek reviewed the most recent revisions to the proposed amendments to the Rules of Juvenile Protection Procedure. Committee members were asked to identify any comments or concerns. Points of discussion included:

- Words such as “records”, “records or documents,” and “records, information or documents” are used interchangeably. For consistency, it would be preferable to define a term, “juvenile protection case records,” and use it throughout the rules in place of the other terms. It’s better to have the term defined within the Juvenile Protection Procedure rules, because that will make the rules more user-friendly. The Adoption Procedure rules should be modified correspondingly.
- The following sentence in the existing Rule 2.01(15) is inconsistent with the Rules of Public Access: “Juvenile protection case records do not include reporter’s notes and tapes, electronic recordings, and unofficial transcripts of hearing and trials.” This sentence can be deleted from the rules. The committee members discussed the difference between official and unofficial transcripts. The adoption rules should be modified correspondingly.
 - A committee member questioned why the following language appeared in the Public Access rules: “A ‘record’ does not necessarily constitute an entire file, as a file may contain several ‘records.’ Court reporters’ notes shall be available to the court for the preparation of a transcript.” The committee member stated that the language was extremely confusing and somewhat nonsensical, and had nothing to do with public access to records. Public Access committee staff attorney Mike Johnson explained that the language was adopted during the 1980s, when the definition of “record” was uncertain. At the time, it was difficult to get people to understand that a court record is more than that which goes up on appeal. Chair

Judge McBride noted that the Public Access rules were outside the committee's charge. The committee member said that the language should be fixed.

- It may be more appropriate to define terms such as “record” by reference to the Public Access rules now that hyperlinks are widely available. This can help avoid inconsistency. It was noted that this issue has already been discussed by the committee.
- Rule 3.06 has been revised to provide that more of the General Rules of Practice, including General Rule 5, apply to Juvenile Protection cases. Committee members expressed concern that General Rule 5, which governs *pro hac vice* admissions, would apply to cases involving Indian tribe. Rule 5 provides, in part: “Lawyers duly admitted to practice in the trial courts of any other jurisdiction may appear in any of the courts of this state provided (a) the pleadings are also signed by a lawyer duly admitted to practice in the State of Minnesota, and (b) such lawyer admitted in Minnesota is also present before the court, in chambers or in the courtroom or participates by telephone in any hearing conducted by telephone.” A staff attorney questioned whether applying General Rule 5 to juvenile protection matters would violate the spirit of the Indian Child Welfare Act. Committee members discussed several possibilities, including exempting attorneys in ICWA cases from the standard *pro hac vice* requirements. It was noted that there needs to be clarity in this area. A committee member suggested that the exception was beyond the scope of the committee. Another committee member noted that it usually is not immediately clear if a case will be subject to ICWA. The committee voted to retain General Rule of Practice 5 as one of the rules that are incorporated by Rule 3.06, but requested staff to draft language exempting tribal attorneys in juvenile protection matters from *pro hac vice* requirements.
- There does not appear to be a conflict between Juvenile Protection Rule 8 and General Practice Rule 11, so the language in Rule 3 regarding the interplay of those two rules can remain.
- Juvenile Protection Procedure Rule 8 has been revised to contain a provision regarding access to documents on appeal. Filers will not be redacting documents filed prior to the effective date of July 1, 2015, but those documents may be the subject of appeals for some time to come. The rule should be amended to reflect that on appeal the files may be transferred electronically and need not be physically transferred.

- The party-participant language in Rule 8.03 is confusing and needs to be rewritten.
- All references in the rules to “records or documents” should be replaced with “records” to eliminate redundant language. Similar, all references in the rules to “records, documents or information” should be changed to “juvenile protection case records”.
- The distinction between access after the effective date and access before the effective date should be made clear.
- Currently, redaction is done by mechanical means. It may be possible to provide electronic redaction in the future.
- The requirement to omit restricted (confidential) information from briefs may require attorneys to adapt their writing practices. Family law attorneys have adapted to this requirement successfully.
- The “documents requiring redaction” language is intended to emphasize that it is the responsibility of filers, not court staff, to ensure that restricted information is properly removed from filings.
- The committee voted to use the term “confidential” rather than the term “restricted”.
- Rule 8.03, subd. 5(b)(2), as currently proposed, is confusing.
- Self-represented litigants will have difficulty complying with the redaction rules, especially since the committee members themselves are struggling to understand the language in the rules.
- The requirement that judges omit restricted information from orders is onerous, and will undermine public trust in the judicial branch. Judges need to be able to justify their decisions. The requirement should be stricken, and a comment added that judges should not include confidential information in their orders.
- The committee should recommend that General Rule of Practice 5 have an exception for tribal attorneys.
- The comment entitled “2001 Advisory Committee Comment – 2015 Amendment” is error-ridden and needs to be fixed.
- Rule 10.03 should be changed to allow service in the courtroom.
- The standard service language needs to be double-checked.
- Subdivision 3 of Rule 31.01 is redundant and can be deleted.

- In Rule 31.06, it's not clear what "successful" completion is.
- Rule 33.01 should be deleted.
- The phrasing of Rule 37.02 should be reviewed to avoid a social services system issue.
- The term "adoption case records" should be adopted throughout the adoption procedure rules. The term "record" should be defined in the adoption rules.

Concluding remarks:

Judge McBride explained that a draft report would be circulated to the committee members by December. He asked that each committee member carefully review the report and raise any issues in "reply-all" emails. Justice Stras remarked that Judge McBride would have the task of justifying the committee's report to the Supreme Court. Judge McBride thanked the committee members for their work.