

THE SUPREME COURT OF MINNESOTA

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25 Constitutional Avenue
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St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

FEB 23 1999

February 23, 1999

FILED

Dear Mr. Grittner,

On behalf of the Hon. Casey Christian, Chair of the Civil Commitment Rules Committee and all other Civil Commitment Rules Committee Members, I am forwarding to you an original and thirteen copies of the Proposed Rules for Civil Commitment for filing. For your convenience, I have also enclosed an electronic version of the Proposed Civil Commitment Rules. Let me know if you have any questions.

Sincerely,



Julie Duckstad
State Court Administration

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-1646

In re Special Rules of Procedure Governing Procedures under the Minnesota Commitment Act

Recommendations of the Minnesota Supreme Court

Civil Commitment Rules Committee

Final Report

February 23, 1999

Hon. Casey J. Christian, Owatonna, Chair

OFFICE OF
APPELLATE COURTS

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Janice Allen, Anoka
Hon. James Finley, St. Paul
Melanie Ford, Duluth
Beverly Jones Heydinger, Minneapolis
Bonnie Lee, St. Paul
Colleen Brady, Minneapolis

Steven Kufus, St. Paul
Hon. Herbert Lefler, Minneapolis
Carolyn Peterson, Minneapolis
Pat Siebert, Minneapolis
Thomas Bennett Wilson, III, Edina

CIVIL COMMITMENT RULES COMMITTEE

Summary of Committee Recommendations

The Civil Commitment Rules Committee was appointed by the Supreme Court in October, 1997, and directed to make changes to the Special Rules of Procedure to reflect the changes in the Minnesota Commitment Act.

The Committee has drafted the rules of procedure to afford sufficient due process and to assure that necessary treatment is not unduly delayed. The Committee's proposal attempts to balance the rights of the patient and the need for swift action in Commitment proceedings. These rules are intended as a complete recodification of the existing rules, which should be repealed upon the enactment of the committee's proposed rules.

Effective Date

The committee is submitting the rules to the court in February with the expectation that the court make them effective, after any necessary public hearing or notice and comment period, on either July 1, 1999, or January 1, 2000. The committee does not believe these amendments require significant "lead time" between adoption and effective date.

Areas of Special Concern

There are two proposed rules which the committee believes should be called to your attention.

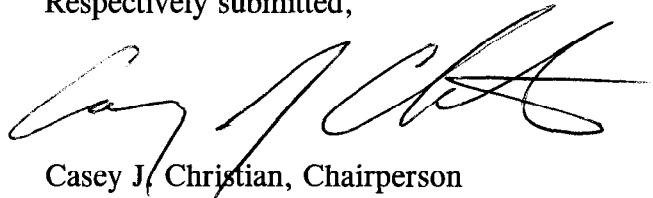
The first concern is Proposed Rule #4 dealing with consecutive hold orders. The comment explains the concern.

The second concern is Proposed Rule #13 entitled Medical Records. The Statute provides that certain designated persons are entitled to review "relevant" and/or "pertinent" medical records of the Respondent. The only person in the loop who can

determine relevancy is the Court. The time frames make court review impossible. The rule has been drafted to provide the designated person with access to all medical records subject to a protective provision that the records may not be disclosed to third persons unless the Respondent consents or by Court order.

A sub-committee consisting of Referee James Finley, Ramsey County; Thomas Wilson, Wilson Law Office, Edina; Janice Allen, Anoka County and myself will be available to meet with you and answer questions as they arise.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'Casey J. Christian', written in a cursive style.

Casey J. Christian, Chairperson
MINNESOTA SUPREME COURT CIVIL
COMMITMENT RULES COMMITTEE

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

RULE 1 - GENERAL

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3 (a) Scope. The Special Rules shall apply in proceedings under the 1997 Minnesota
4 Commitment and Treatment Act, Minnesota Statutes Ch. 253B and its
5 amendments.
- 6 (b) Rules Superseded. The Special Rules shall supersede any other body of rules
7 otherwise applicable (e.g., the Rules of Civil Procedure for the District Courts,
8 Probate Court Rules, etc.) in conflict with these Special Rules.
- 9 (c) Citation. These Special Rules may be cited as Commitment and Treatment Act
10 Rules.

Advisory Comment - - 1999

11 The Act, as codified under Minnesota Statutes Ch. 253B, is detailed and the
12 practitioner must be familiar with both the Act and these rules.
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RULE 2 – COMPUTATION OF TIME

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

25 **Advisory Committee Comment - -1999**

26 These rules contemplate that service may be effected personally, by mail, or by fax. There are
27 instances in the statute when a notice or a report does not need to be “given” to an attorney. The
28 rule ensures that the attorneys know the basis of any hearing scheduled by the court upon receipt
29 of a filed document. When a party requests a hearing after notice that the treatment center or
30 designated agency intends to take some action (as in the case of revocation of provisional
31 discharge), this rule expands the period of time if the notice was mailed to the attorneys. If the
32 notice was faxed, the time to request the hearing is not expanded.

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35 **RULE 3 – SERVICE**

36 Whenever a person is required to give or serve any document under this chapter to any
37 party, attorney, or entity other than the court, service may be made in any manner allowed under
38 the Minnesota Rules of Civil Procedure. Attorneys for both parties must also be served whether
39 or not service upon counsel is specifically required by statute.

40 **Advisory Committee Comment - - 1999**

41 *See* comment to Rule 11.
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43

44 **RULE 4 – CONSECUTIVE HOLD ORDERS PROHIBITED**

45 A person held under a 72-hour emergency hold must be released by the facility within 72
46 hours unless a court order to hold the person is obtained. A petition for commitment need not
47 have been filed in order to obtain a court-ordered hold. A consecutive hold order not issued by
48 the district court is expressly prohibited, whether or not issued by the same physician or other
49 authority.

50
51 **Advisory Committee Comment - - 1999**

52 Minn. Stat. § 253B.07, subd. 2b, allows for an *ex parte* application to the court for an
53 apprehension and hold order whether or not a petition for commitment has been filed
54 with the court. The committee recommends that there be very limited use of the *ex parte*
55 request for judicial hold without a simultaneous filing of a commitment petition. The
56 committee recognizes, however, that due to weather, changes in a respondent’s conduct,

57 communication difficulties, or plain error, there may be an occasional situation where the
58 commitment petition cannot be filed during the 72-hour hold and outright release may
59 endanger a respondent's or other person's safety. The respondent retains the right to
60 request release. See Minn. Stat. § 253B.05, subd. 3b.

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63 **RULE 5 – CASE CAPTIONS**

64 Civil commitment proceedings shall be captioned in the name of the person subject to the
65 petition as follows: *In the Matter of the Civil Commitment of: (Full Name of Respondent),*
66 *Respondent.*

67 **Advisory Committee Comment - - 1999**

68 A person subject to commitment proceedings is referred to as the respondent
69 throughout these rules. The court and counsel shall be sensitive to the correct
70 pronunciation of a respondent's name.

71
72 **RULE 6 - COMMENCEMENT**

73
74 A proceeding for commitment or early intervention is commenced upon filing a petition
75 with the District Court pursuant to Minnesota Statutes Ch. 253B.01-.23.

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

81 **Advisory Committee Comment - - 1999**

82 The committee has attempted to address concerns where conflicts occur between the
83 county of financial responsibility (respondent's residence) and the county where
84 respondent is present, regarding who shall file the petitions, and to provide guidance in
85 light of short statutory time constraints. The committee did not intend to remove
86 discretion from the county attorney in the county where the respondent is present. If
87 statutory conditions are present for commitment and the county attorney in the county
88 where the respondent is present determines that a commitment is necessary and
89 reasonable for the protection of the respondent or others, then the petition must be filed.
90 Ultimate financial responsibility will be resolved in accordance with Minn. Stat. §
91 256G.01-.12.

121 The court shall direct that a copy of the pre-petition screening report, the petition, and the
122 examiner's supporting statement be personally served upon the respondent with the summons if
123 issued, and that a copy be distributed to the parties' attorneys and any other person identified in
124 Minnesota Statutes Ch. 253B.

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RULE 9 – APPOINTMENT AND ROLE OF COUNSEL

127 Immediately upon the filing of a petition for commitment or early intervention the court
128 shall appoint a qualified attorney to represent the respondent at public expense at any subsequent
129 proceeding under this chapter. The attorney shall represent the respondent until the court
130 dismisses the petition or the commitment and discharges the attorney.

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

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

134 Counsel for the respondent is not required to file an appeal or commence any proceeding
135 under Minnesota Statutes Ch. 253B if, in the opinion of counsel, there is an insufficient basis for
136 proceeding.

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RULE 10 – ATTORNEY-CLIENT PRIVILEGE

139 The content of attorney-client communications by telephone, mail, or conference
140 at the facility, shall not be monitored, censored, or made part of a respondent's medical record.
141 The facility may open and inspect, but not read, a letter or package, and must do so in the
142 respondent's presence.

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RULE 11 – EXAMINER’S LIST

The court administrator shall prepare and maintain a list of examiners. A statement of the manner and rate of compensation of examiners shall be attached to the list. Examiners shall be paid at a rate of compensation fixed by the court. If a party seeks appointment of an examiner not on the list, or at a rate of compensation exceeding that fixed by the court, the party shall seek approval of the court prior to appointment.

RULE 12 – EXAMINER REPORTS

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

- (a) Whether the respondent is mentally ill, mentally retarded, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;
- (b) Whether the examiner recommends commitment;
- (c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication;
- (d) The respondent’s capacity to make decisions about neuroleptic medication, if needed; and
- (e) If the petition alleges that the respondent is mentally ill and dangerous to the public, whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

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

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

172

173 **RULE 13 – MEDICAL RECORDS**

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

181

182 **RULE 14 – LOCATION OF HEARING, RULES OF DECORUM, ALTERNATIVE**

183 **METHODS OF PRESENTING EVIDENCE**

184 The judge or judicial officer shall assure the decorum and orderliness of any hearing held
185 pursuant to Minnesota Statutes Ch. 253B. The judge or judicial officer shall afford to respondent
186 an opportunity to be dressed in conformity with the dignity of court appearances.

187 A hearing may be conducted or an attorney for a party, a party, or a witness may appear
188 by telephone, audiovisual, or other electronic means if the party intending to use electronic
189 means notifies the other party or parties at least 24 hours in advance of the hearing and the court

190 approves. If a witness will be testifying electronically, the notice must include the name,
191 address, and telephone number where the witness may be reached in advance of the hearing.
192 This rule does not supersede Minn. Stat. § 595.02- §595.08 (competency and privilege). The
193 court shall insure that the respondent has adequate opportunity to speak privately with counsel.

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RULE 15 – EVIDENCE

196 The Court shall admit all relevant, reliable evidence, including but not limited to the
197 respondent’s medical records, without requiring foundation witnesses.

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RULE 16 – RIGHTS OF PATIENTS

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

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RULE 17 – PETITION TO DETERMINE NEED FOR CONTINUED CARE

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

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RULE 18 - RECOMMITMENT

212 For recommitments pursuant to Minn. Stat. § 253B.13, the court shall append the
213 immediately preceding commitment file to the file on the new petition.

214

215 **RULE 19 – TERMINATION OF EARLY INTERVENTION**

216 Any petition for involuntary commitment filed at the termination of court-ordered early
217 intervention under Minn. Stat. § 253B.065 shall be treated as an initial commitment petition and
218 not a recommitment.

219

220 **RULE 20 – TERMINATION OF COMMITMENT**

221 The court shall order termination of the commitment when the commitment expires, or
222 upon a direct discharge by the treatment facility, or upon a discharge by the Commissioner of
223 Human Services.

224 The order shall also discharge the court-appointed attorney.

225 **Advisory Committee Comment - - 1999**

226 Minn. Stat. § 253B.12, subd. 1(e), provides for an order terminating the commitment if
227 a 60-90 day report is not timely filed or if the report describes the respondent as not in
228 need of further institutional care and treatment. There is no similar provision for
229 terminating the commitment if the report required by Minn. Stat. § 253B.16 is not filed or
230 if there is a final discharge under Minn. Stat. § 253B.16 or if a provisional discharge
231 expires under Minn. Stat. § 253B.15, subd. 9. This rule insures a formal termination of
232 the proceeding and discharge of the respondent’s court-appointed attorney.

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234 **RULE 21 – PUBLIC ACCESS TO RECORDS**

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

238 (b) The court administrator shall create a separate section or file in which the pre-
239 petition screening report, court appointed examiner's report, and all medical
240 records shall be filed. Records in that section or file shall not be disclosed to the
241 public except by express order of the district court. This provision shall not limit
242 the parties' ability to mention the contents of the pre-petition screening report,
243 court appointed examiner's report and medical records in the course of
244 proceedings under Minnesota Statutes Ch. 253B.

245
246 **RULE 22 – STAYED ORDERS (MENTALLY ILL AND DANGEROUS TO THE**
247 **PUBLIC, SEXUALLY DANGEROUS PERSONS, AND SEXUAL**
248 **PSYCHOPATHIC PERSONALITES)**

249 Stayed orders for commitment as mentally ill and dangerous to the public, sexually
250 dangerous person, or a sexual psychopathic personality may be issued only by agreement of the
251 parties and approval by the court.

252
253 **RULE 23 – EVALUATION AND FINAL HEARINGS IN CASES GOVERNED BY**
254 **MINN. STAT. § 253B.18 AND MINN. STAT. § 253B.185**

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

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

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

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

280 (d) The written report of the head of the treatment facility pursuant to Minn. Stat. §
281 253B.18, subd. 2, shall address the criteria for commitment and whether there has
282 been any change in the respondent's condition since the commitment hearing. The
283 report shall provide the following information:

- 284 (1) the respondent's diagnosis;
- 285 (2) the respondent's present condition and behavior;
- 286 (3) the facts, if any, that establish that the respondent continues to satisfy the
287 statutory requirements for commitment;
- 288 (4) a description of treatment efforts and response to treatment by the respondent
289 during hospitalization;
- 290 (5) the respondent's prognosis;
- 291 (6) the respondent's individual treatment plan;
- 292 (7) an opinion as to whether the respondent is in need of further care and
293 treatment;
- 294 (8) an opinion as to the program or facility best able to provide further care and
295 treatment, if needed;
- 296 (9) an opinion as to whether respondent is dangerous to the public or himself.

297 All supportive data and documentation shall be attached to the report.

- 298 (e) At the hearing, the court shall consider all competent evidence relevant to the
299 respondent's present need for continued commitment. The burden of proof at the
300 hearing is upon the proponent of indeterminate commitment to establish by clear
301 and convincing evidence that the statutory requirements for commitment under
302 Minnesota Statutes Ch. 253B continue to be met.

303

304 **Advisory Committee Comment - - 1999**

305 This rule is intended to require final resolution of the commitment process of a
306 respondent who is mentally ill and dangerous to the public, a sexually dangerous person,
307 or a sexual psychopathic personality with all due diligence. An initial hearing should not
308 be "reviewed" years later. The rule is not intended to dictate where a committed person
309 should be confined. If a commitment is sustained upon review and the individual is still

310 subject to commitment to the Commissioner of Corrections the balance of the sentence is
311 to be served in a correctional institution.