STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2165

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES OF JUVENILE PROCEDURE

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center,on February 27,1996 at 2:00 p.m., to consider the proposed amendments to the Rules of Juvenile Procedure made by the Supreme Court Advisory Committee on the Minnesota Rules of Juvenile Procedure. A copy of the proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before February 23, 1996 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before February 23, 1996.

Dated: December 18, 1995

BY THE COURT:

A.M. Keith
Chief Justice

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

KEVIN S. BURKE
CHIEF JUDGE
CHAIR, CONFERENCE OF CHIEF JUDGES
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
(612) 348-4389
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February 21, 1996

Mr. Fred Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Hearing to Consider Proposed Amendments to the Rules of Juvenile Procedure

Dear Mr. Grittner:

On February 16, 1996, the Conference of Chief Judges considered the proposed revisions to the Rules of Juvenile Procedure. The Conference commended the advisory committee for its extensive efforts, but recommends that the Supreme Court give further study to the issues of the assignment of judges and the removal of judges.

Enclosed is a resolution of the Conference pertaining to this concern and a request that the Conference be given until May 1, 1996, to analyze these Rules and their implication on the workload of the trial court judges in the state and to submit suggested alternatives.

I respectfully request that this letter be made a part of the record for the above-referenced hearing scheduled for February 27, 1996. A total of twelve copies are enclosed.

Thank you for your cooperation in this matter.

Respectfully submitted,

Kevin S. Burke

Kevin S. Burke, Chair
Conference of Chief Judges

KSB/cf
Enclosures

District Court of Minnesota
THIRD JUDICIAL DISTRICT

January 22, 1996

STEELE COUNTY COURTHOUSE
OWATONNA, MINNESOTA 55060
TELEPHONE 507/451-8040

CASEY J. CHRISTIAN
JUDGE OF DISTRICT COURT

The Honorable Chief Justice Keith
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Clerk of Appellate Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

The Honorable Leslie Metzen
Judge of the District Court
Dakota County Judicial Center
1560 Highway 55
Hastings, Minnesota 55033

Re: Proposed Juvenile Court Rules

To Whom it May Concern:

I am writing with comments and concerns regarding the proposed rules of juvenile procedure. I have had the benefit of several trials settling which has given me the needed time. I suspect few trial judges have been able to do so.

First, it appears that little consideration has been given to the single judge county and the additional expenses which will be necessary to jockey judges from county to county to meet the requirements of these rules. **Please** don't enact changes which have a negative impact on the budget. I have been informed by the District Administrator that the Courts are facing a $619,000.00 shortage without these changes.

Rule 1.02 states that the "purpose of the juvenile rules is . . . to assure that the constitutional rights of the child are protected." Yet the committee lets stand a legislative change which denies the right to counsel at public expense to all juvenile "petty offenders" which encompasses almost all misdemeanor violations. The right to counsel is at the heart of our constitution. It is a fundamental right. How can any judge pretend that a 12 or 13 year old child can adequately represent him or herself. Keep in mind that the child's parent is also precluded from participating in any proceeding until after conviction.

Rules 2.01 and Rule 17.07 (3) are inconsistent. You cannot maintain confidentiality **and** give "group rights" at arraignment.

Rule 2.04 (2) Right to Participate - Guardian ad Litem - confuses me. Why is a G.A. L. allowed to participate in all hearings but the child's parents, his /her natural, all encompassing guardian, can only participate in dispositional hearings?

Rule 3.02 (3) Appointment of Counsel - Out-of-Home Placement - says that the court shall appoint counsel at public expense in any proceeding where out-of-home placement is proposed. The reality of practice is that out-of-home placement is not proposed, discussed, or even contemplated until after a finding of guilt. Prosecutors simply don't have the information in front of them to know what specific disposition may eventually be proposed at the time they draft the charging instrument. This rule will result in a blanket practice of proposing out-of-home placement or tying the Court's hands at the time of disposition because out-of-home was not proposed on the petition so no attorney was appointed.

Rule 3.03 Dual Representation - places a responsibility on the Court which should be left to the attorney attempting dual representation. The attorney should be required to file an affidavit signed by the attorney and an affidavit signed by the child verifying that the rights and conflicts and dangers have been explained and waived.

Rule 3.04 Waiver of Right to Counsel - How can a child who wants an attorney but can't afford to hire one, who has no right to Court-appointed Counsel at public expense, waive the right to counsel? Why does the waiver have to be both on the record and in writing. This seems a waste and redundant? Perhaps it is because the right is so important that we are stressing it - except, of course, for "petty offenders" who have no right at all in reality. How does this rule affect the ability of a police officer to advise a child of his or her rights, obtain a waiver, and obtain a confession? Does the child have to advised of his of her rights via an in-person consultation with an attorney first? If the Court is no longer competent to provide a satisfactory explanation of rights, is a police officer?

Rule 3.04 (2) - If a child is able to voluntarily waive the right, why must the court appoint stand-by counsel. Stand-by counsel should be left to the discretion of the court.

Rule 3.06 Eligibility for attorney at Public Expense - I have been unable to find quidelines as to what constitutes a "substantial hardship". Lodging, food and utilities would obviously come before retaining an attorney but does the car payment or cabin payment?

Rule 5.04 Release of Continued Detention - The Court should be allowed to detain the child when the child's parents refuse to allow the child to return home.

Rule 5.04 (4) (C) Approval of Prosecuting attorney - The first and last sentences of this paragraph directly contradict each other. The first sentence says "No request for a probable cause determination may proceed without approval by the prosecuting attorney." The last sentence says "If the prosecutor is unavailable, the court may make the probable cause determination if the matter

should not be delayed." Perhaps the first sentence should state "all reasonable effort should be made to obtain approval of the prosecuting attorney before submitting the issue of probable cause to the Court."

Rule 5.07 (2) Detention hearing - Notice - The time frames are so short that telephonic notice to the parties should be used as well as written notice.

Rule 6 Comments speak of a juvenile offense payables list of fines. I have never heard of such a thing for Juvenile Court. Is a Juvenile payables list wise? Don't we want a little more impact than that? Won't the parents simply end up paying most of the fines?

Rule 7.03 Timing of Arraignments - Why have a 20 day restriction for arraignment following service of the charging instrument. There are many times when I don't have calendar time to do it within 20 days. What will happen is that the charging instruments will have to pile up in the court administrator's office and just won't be sent out until they can be heard within 20 days. Why not simply put the initial appearance day on the summons as soon as it can possibly be heard.

Rule 7.04 (2) Reading the Allegations - Why does the Court have to read them? Why can't it by the prosecutor or the Court Clerk? What does "provide and explanation" mean? I would suggest that the paragraph simple end with "determine that the child understands them."

Rules 12.02 and 22.03 Reassignment of Fact Finder and Interest or Bias of Judge - These are the rules that demonstrate the least concern for budgetary constraints and single judge counties.

At the close of every jury trial I instruct the lay jurors that "You are to disregard all evidence which I have ordered stricken or have told you to disregard." see CRIMJIG 3.06. I am insulted by a Rule that obviously indicates that I am not competent to do what I expect lay jurors to do. It is interesting that if the evidence is stricken during the trial I may proceed to hear the matter and decide the facts but if I strike the evidence before trial I may not. This is logically inconsistent to me.

Rule 22.03 allows an attorney or child to remove a judge without any further showing of bias other than having knowledge of the child or the child's social or juvenile court history even if part of a prior delinquency or juvenile court proceeding. In rural Minnesota you will have to bring in a different judge to hear the vast majority of cases then, because after living here 21 years I know most of the juveniles' grandparents, parents, siblings, dogs and cats. I generally feel this is a good thing, not a bad thing. I feel the trial judge should determine when he or she is too close to a matter to be able to be fair. The general exclusionary rule applies to all criminal matters as well. We all know that a person is not to be convicted of a current offense because of prior matters unless one of the exceptions is established. I am also insulted by a rule that obviously indicates that I am not competent to follow the general exclusionary rule.

If the child is allowed a "clean slate judge" for every offense, think of the financial ramifications to the judiciary. A small percentage of juveniles return to court with great frequency. I have several juveniles whose priors exceed 10-15 offenses. There are only 22 judges in the entire district. When the juvenile's slate exceeds that of chambered judges in the district, are we to go

outside of the district for a clean slate judge? Rule 22.03 should be rewritten to allow removal upon an actual showing of bias only.

These rules have very short time lines. The Rules must demonstrate an understanding of the difficulty involved and time it can take for a Court Administrator's office to arrange for bench switches between counties?

The comments to Rule 22 refer to fair trials and fundamental due process rights. For pity sake we don't even allow petty offenders to have attorneys unless they can afford their own, which in my experience, means they have no attorney. Isn't it a fairer process to have an attorney present the child's case to a judge who may know the child rather than to require the child to present his or her case pro se to a total stranger?

Rule 14.01 Agreements Permitted - This type of agreement must be in writing and filed so that anyone inspecting the file can determine what has gone on without tracking down the Court Reporter and reviewing the transcript. There will also be fewer arguments upon violation as to what the terms were. As written, the rule allows the agreements to be on the record.

Rule 14.10 says the court has the inherent power to continue a case for dismissal. I don't know where this power comes from and feel that the Court of Appeals was in error in finding such a power in State vs. Krotzer. Hopefully the Supreme Court will have ruled before this rule is promulgated.

Rule 15.03 (4) Predisposition Reports - This subdivision says that when there are no attorneys involved the court can enter a disposition without allowing the child or the parents to see the disposition report. I find a distinct due process problem with that concept. The defendant should always have to right to view the information the Court may be using against him/her.

Rule 15.05 (2) Dispositional Order - This rule continues a statutory requirement that in my experience is summarily ignored by the trial courts. We don't have time, given the caseloads, to make findings which explain what we have done, much less why we didn't do something that someone recommended. The only courts I have seen attempt to address these requirements simply have preprinted language on the form that pays lip service.

The rules need a dose of reality. A rule needs to be fashioned that conforms to the reality of the situation. Perhaps the rule should read "the Court shall consider the dispositions which are financially available to the County and the child's parents or guardians and select from the options available those which will best serve the interests of the child and the community."

Rule 15.07 (3) (4) indicates that a child may be denied the right to confront a witness when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. I simply can't imagine where this could apply. If need be, the child could be shackled to prevent assault upon the witness.

Rule 20.02 (3) Defense of Mental Illness - Subdivision three - This prevents an uncooperative child from presenting a mental illness defense. This strikes me as not the best way to proceed under a best interest of the child standard.

Rule 21.12 (1) Appeals, In Forma Pauperis - This rule allows direct application to the state public defender and, if not happy, direct application to the Supreme Court. Then out of the blue, it states that if the parents are financially able to contribute, the District Court may so order. How did the District Court become involved again here?

Rule 30.02 (2) Availability of Juvenile Court Records - This rule allows attorneys to have copies and GALs to have copies but not the parents or the child. The rule at Subdivision 2 (B) (2) says that "guardian ad litem for the child's parents" get a copy. This must be an error.

Rule 30.03 allows for each individual Court to set up its own rules. The General Rules of Practice came into being to stop this type of chaos. Don't let it start up again, even in Hennepin and Ramsey Counties!

In conclusion, the time lines set up in these rules are totally unrealistic. It takes longer than 30 days to get an appointment with a psychiatrist much less the examination done and the report back in 28 days so the parties can have the report at least 48 hours before the hearing. If the time lines were tripled in all categories they will better reflect what can reasonably be accomplished with existing resources.

Sincerely,

Casey J. Christian
Judge of District Court

District Court of Minnesota

EIGHTH JUDICIAL DISTRICT

ARTHUR J. BOYLAN
JUDGE OF DISTRICT COURT

KANDIYOHI COUNTY COURTHOUSE
P.O. BOX 1337
WILLMAR, MINNESOTA 56201
TELEPHONE (612) 231-6206
FAX NO.(612) 231-6276

February 20, 1996

Mr. Frederick Grittner
Clerk of the Appellate Court
245 Minnesota Judicial Center
25 Constitution Avenue
Saint Paul, Minnesota 55155

RE: Proposed Minnesota Rules of Juvenile Procedure

Dear Mr. Grittner:

On February 9, 1996, the judges of the Eighth Judicial District conducted their quarterly meeting and considered the proposed Minnesota Rules of Juvenile Procedure. Following discussion, the Eighth Judicial District Judges unanimously resolved to oppose the following provisions of the proposed rules:

Proposed Rule 12.02 Reassignment of Fact Finder

Proposed Rule 22.03 Interest or Bias of Judge

Proposed Rule 22.04 Notice to Remove

Opposition to these provisions of the proposed rules is based upon the extreme inconvenience which will be placed upon the judges and parties of the Eighth Judicial District if adopted by the Supreme Court.

Please convey the objection of the Eighth Judicial District Judges to the Minnesota Supreme Court.

Sincerely,

Arthur J. Boylan
Assistant Chief Judge
Eighth Judicial District

cc: Eighth Judicial District Judges

THE MINNESOTA

COUNTY ATTORNEYS

ASSOCIATION

Hamline Park Plaza
570 Asbury Street
Suite 203
St. Paul, MN 55104-1849

612/641-1600

FAX
612/641-1666

February 22, 1996

Frederick K. Grittner
Supreme Court Administrator
Clerk of Appellate Court
25 Constitution Avenue
St. Paul, MN 55155

Re: February 27, 1996 Hearing on Proposed Rules of Juvenile Procedure

Mr. Grittner:

Please be advised that Minnesota County Attorneys Association Board President Raymond Schmitz requests permission to appear on behalf of the Association to provide testimony at the Minnesota Supreme Court's hearing on the Proposed Rules of Juvenile Procedure.

Enclosed are twelve copies of the Association's testimony.

Sincerely,

Gina G. Washburn
Executive Director

GGW:md

THE MINNESOTA

COUNTY ATTORNEYS

ASSOCIATION

February 27, 1996

Hamline Park Plaza
570 Asbury Street
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Members of the Court:

This testimony, filed with the Court on February 22, 1996, serves as the Minnesota County Attorneys Association's (Association) suggestions for improvement in the Final Report on Proposed Rules of Juvenile Procedure.

The Association appreciated the opportunity to participate in drafting these proposed rules through our meetings with prosecutors who served on the Court's Advisory Committee. These prosecutors and their Committee colleagues devoted many hours of their expertise to this Final Report. We are confident that the prosecutorial perspective was well articulated in the Committee process.

The Association is generally supportive of the proposed rules. They are an improvement over the current rules and they represent a significant step toward providing Minnesota with a fair and efficient system of juvenile rules. The Court's solicitation of broader comment, however, offers the Association an opportunity to make suggestions, an offer we would be remiss to dismiss.

For ease of reference, the Association's suggestions follow the order of the proposed rules. In my testimony today, I will highlight several of our suggestions.

TESTIMONY OF THE MINNESOTA COUNTY ATTORNEYS ASSOCIATION

1. **Rule 1.02.** This rule should be amended to make clear that rehabilitating the child and protecting the public are also purposes of the juvenile rules.

Suggested change: Amend rule as follows: The purpose of the juvenile rules is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota, ~~and~~ to assure that the constitutional rights of the child are protected, to promote the rehabilitation of the child and the protection of the public. These rules shall be construed to achieve these purposes.

2. **Rule 2.03 Subd. 2(B).** The rule requires the prosecuting attorney to be present or available for all hearings unless otherwise agreed by counsel and approved by the court. The rule should be amended to allow the court sole discretion to excuse the prosecuting attorney.

Suggested change: Amend the rule as follows:

(B) The prosecuting attorney shall be present or available for all hearings unless otherwise ~~agreed by counsel and~~ approved by the court.

3. **Rule 5.02.** The commentary to this rule should clarify that if a child is already in foster care or shelter care through voluntary placement or CHIPS jurisdiction, continued placement in the same setting pending a subsequent delinquency proceeding does not automatically trigger the detention criteria in the rule.

Suggested Change: Add the following commentary to the rule: If a child is already in foster care or shelter care through voluntary placement or CHIPS jurisdiction, continued placement in the same setting pending a subsequent delinquency proceeding does not automatically trigger the detention criteria in the rule.

4. **Rule 5.03.** This rule describes non-exclusive factors that may justify a decision to detain a child. The rule includes as a factor that a child has been charged with certain enumerated misdemeanors. The rule also includes as a factor that a child was taken into custody for an offense which would be a presumptive commitment to prison if committed by an adult, or a felony involving the use of a firearm. There is a considerable gap between these two factors. The gap includes such acts as felony third degree assault and felony terroristic threats. It is difficult to conceive of a policy justification for such a gap. The rule should be redrafted to allow for any gross misdemeanor or felony conduct to serve as a factor that may justify a decision to detain a child.

Suggested change: Amend the rule as follows:

Subd. 2. The following non-exclusive factors may justify a decision to detain a child:

(A) the child is charged with the misdemeanor offense of arson, assault, prostitution or a criminal sexual offense;
(B) the child was taken into custody for an offense which ~~would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm~~ is a gross misdemeanor or a felony.

5. **Rule 6.02.** This rule allows a child to demand the prosecution to file a petition with the court on juvenile petty offenses, misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes section 169.121. The rule should be amended to allow the child to make such a demand only in misdemeanor level cases. In juvenile petty and traffic cases, the demand adds very little to the process other than delay.

Suggested change: Amend the rule as follows:

Subd. 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes § 260.015, Subd. 21, misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes § 169.121 may be charged by tab charge or citation. Before entering a plea of guilty or not guilty to a misdemeanor or gross misdemeanor charge ~~the alleged charge(s)~~, the child may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

6. **Rule 8.04 Subd. 2.** This proposed rule designates the circumstances under which a child may withdraw a plea of guilty. The rule differs substantially from the current adult rule in that it allows withdrawal "for any just reason" and does not require the court to weigh the fairness of allowing the plea to be withdrawn. The rule also does not allow the court to weigh any prejudice allowing the withdrawal would cause. Finally, the rule is not clear that withdrawal requires a motion.

Suggested change: Adopt language similar to the Minn. R. Crim. Pro. 15.05, Subd. 2.

In its discretion the court may allow the child to withdraw a plea at any time before sentence if it is fair and just to do so, giving due consideration to the reasons advanced by the child in support of the motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the child's plea.

7. **Rule 10.05 Subd. 1(C)(5).** This rule requires the child's counsel to inform the prosecuting attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency. The rule contains an exception, however, if revealing prior offenses "might result in enhancement of pending offenses". It is not clear what enhancement of a pending offense is intended to mean in this context. A broad interpretation of the phrase could practically gut the disclosure requirement. In light of the difficulty in compiling a juvenile criminal history given the current state of juvenile justice data systems as well as the value of the information to the rehabilitative goal of the juvenile justice system, the exception is difficult to justify. A better balance of the competing interests would provide that the juvenile need only disclose his or her previous record if the prosecutor reveals what is known to the prosecutor.

Suggested change: Adopt current Juvenile Rule of Procedure 24.01 Subd. 1(E) and 24.02 Subd. 1(C)(5).

8. **Rule 12.02.** The rule requires assignment of a new judge if the court suppresses evidence before trial as the result of an omnibus hearing unless the parties agree otherwise. The rule essentially presumes that the child's right to a fair trial is compromised when the fact finder suppresses evidence after a hearing. The Minnesota County Attorneys Association (MCAA) is unaware of any study supporting such a presumption and believes the presumption is misguided. Moreover, since juvenile court represents a specialty practice area for a number of judicial districts, finding a new judge will cause unnecessary hardship and delay.

Suggested change: Delete the proposed rule.

9. **Rule 13.02 Subd. 4.** The rule provides for dismissal unless good cause is shown for the delay. The rule goes on to state that "[g]ood cause may include reassignment of the fact finder following suppression of evidence at an omnibus hearing pursuant to Minnesota Rules of Juvenile Procedure 12.02 or after the child removes a judge pursuant to Minnesota Rules of Juvenile Procedure 22.03." MCAA is opposed to rules 12.02 and 22.03. If, however, rule 12.02 and 22.03 are retained, the rule 13.02 should provide both the child and the prosecutor the ability to remove the fact finder without further showing bias and interest. Consistency between rules 12.02, 22.03 and rule 13.02 Subd. 4 should require good cause to be defined in rule 13.02 Subd. 4 as covering the situation in which either the child or the prosecutor removes a fact finder under rules 12.02 and 22.03.

Suggested change: The last sentence of rule 13.02 Subd. 4 should be amended as follows:

Good cause may include reassignment of the fact finder following suppression of evidence at an omnibus hearing pursuant to Minnesota Rules of Juvenile Procedure 12.02 or after the child <u>or prosecuting attorney</u> removes a judge pursuant to Minnesota Rules of Juvenile Procedure 22.03.

10. **Rule 15.05 Subd. 2(A).** The rule requires the court's dispositional order to contain written findings of fact supporting the disposition including why the best interests of the child are supported by the disposition, what alternative dispositions were recommended to the court and why the alternatives were not ordered. Minnesota Statutes § 260.01 lists public safety as the first and overriding purpose of a juvenile delinquency disposition. Given this clear legislative direction, the rule should require written findings as to why public safety is served by the disposition ordered.

Suggested change: Amend Rule 15.05 Subd. 2(A) to add as clause (1) the following language:

<u>(1) why public safety is served by the disposition ordered;</u>

11. **Rule 15 Commentary.** The commentary to rule 15 should make it clear that a court's adjudicatory authority extends beyond the age of 19 even if no further disposition is possible. For example, if a juvenile admits to criminal conduct before turning 19 but fails to appear for disposition and is apprehended after turning 19, the juvenile may still be adjudicated on the petition and collateral consequences may be incurred.

Suggested change: Add appropriate commentary language.

12. **Rule 17.01 Subd. 1(A).** The rule defines a juvenile petty offense. The rule does not track current statutory language relating to juvenile petty offenders, and therefore creates potential for inconsistency and confusion. In addition, proposed legislation currently making its way through the legislature will amend the definition of juvenile petty offense. Assuming that language is ultimately signed into law, that definition should be incorporated into the rule.

Suggested change: Provided it passes and becomes law, incorporate the amended statutory definition of juvenile petty offense into the rule.

13. **Rule 18.03 Subd. 4.** The rule requires copies of the certification study to be provided to the child's counsel and to the prosecuting attorney forty-eight hours prior to the time scheduled for the certification hearing. Certification hearings often involve complicated issues and witness testimony requiring more than forty-eight hours to consider and prepare. Seven days would be a more appropriate amount of lead time to provide all parties with adequate time to consider the report and prepare a response.

Suggested change: Amend the rule as follows:

The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel ~~forty-eight (48) hours~~ seven (7) days prior to the time scheduled for the hearing.

14. **Rule 18.04 Subd. 1(A).** The rule spells out who shall be admitted to certification hearings. The rule provides the courts with discretion to admit persons who "have a direct interest in the case." The rule should be clarified to provide that victims are included as persons who have such an interest.

Suggested change: Amend the first sentence of the rule as follows:

The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, are victims of the conduct for which the child is sought to be certified, have ~~a~~ another direct interest in the case, or have an interest in the work of the court.

15. **Rule 18.04 Subd. 4(C)(6) and (7).** These rules provide that the child's attorney shall argue last in closing on a motion opposing presumptive certification. In the presumptive certification setting, the defense carries the burden of proof. Accordingly, the rule properly recognizes that the child's counsel should make the first opening argument and should present evidence first. The rule inexplicably reverses the order of closing argument. The rule should consistently require the child's counsel, as the party with the burden of proof, to proceed first.

Suggested change: Reverse rule 18.04 Subd. 4(C)(6) and (7).

16. **Rule 18.06 Subd. 1(A)(1).** The rule requires the court's certification order to state "the adult court prosecution is to occur on the alleged offense specified in the certification order." The rule should be clarified to allow certification on more than one offense.

Suggested change: Amend the rule as follows:

(1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

17. **Rule 19.02 Subd. 4.** The rule requires copies of the EJJ study to be provided to the child's counsel and to the prosecuting attorney forty-eight hours prior to the time scheduled for the certification hearing. EJJ hearings often involve complicated issues and witness testimony requiring more than forty-eight hours to consider and prepare. Seven days would be a more appropriate amount of lead time to provide all parties with adequate time to consider the report and prepare a response.

Suggested change: Amend the rule as follows:

The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel ~~forty-eight (48) hours~~ seven (7) days prior to the time scheduled for the hearing.

18. **Rule 19.04 Subd. 1(A).** The rule spells out who shall be admitted to EJJ hearings. The rule provides the courts with discretion to admit persons who "have a direct interest in the case." The rule should be clarified to provide that victims are included as persons who have such an interest.

Suggested change: Amend the first sentence of the rule as follows:

The court shall exclude the general public from extended jurisdiction juvenile hearings and shall admit only those persons who, in the discretion of the court, are victims of the conduct for which the child is sought to be certified, have ~~a~~ another direct interest in the case, or have an interest in the work of the court.

19. **Rule 19.08 Subd. 1(B).** The rule provides that the court shall stay execution of the adult sentence on the condition that the child not violate the provisions of the disposition order and not commit a new offense. Under Minnesota Statutes § 260.126 Subd. 5, either violation of the disposition order or commission of a new offense would be grounds to revoke the stay of execution. The rule should reflect this.

Suggested change: Amend the rule as follows:

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the condition that the child shall not violate the provisions of the disposition ordered in Subd. 1(A) above ~~and~~ or not commit a new offense.

20. **Rule 19.08 Subd. 2.** The rule provides that the court may terminate the extended juvenile jurisdiction on the child's twenty-first birthday or at the end of the maximum probationary term, whichever occurs first. The rule also provides that the court may terminate jurisdiction earlier. The provision allowing for earlier termination provides for no notice to the prosecutor. Better practice would be to treat an earlier termination in the same manner as a modification to a dispositional order. Such modifications are treated in proposed rule 15.08.

Suggested change: Amend the last sentence of rule 19.08 Subd. 2 as follows:

The court may terminate jurisdiction earlier in accordance with the procedures set forth in Rule 15.08 governing dispositional modifications.

21. **Rule 21.03** This rule sets out appeal rights and procedures. The rule states an order certifying to adult court is final and appealable whether the order is entered or stayed. Yet, in the unique situation in which the only available alternative to certification is Extended Juvenile Jurisdiction (the presumptive certification motions) the appeal is, in reality, dispositional in nature. Procedural rights in certification and Extended Juvenile Jurisdiction cases are identical.

There is simply no reason to delay trial of the matter pending appeal and risk losing witnesses and other evidence. These rules have a fundamental goal of expediting juvenile procedure. Considerations of judicial economy that underlay the ordinary prohibitions against interlocutory appeals also applies to this goal. If a child is ultimately acquitted, an appeal of adult certification will have been needless. Finally, if the certification is found to have been in error, the adult sentence resulting from the certification may be simply reimposed as a stayed Extended Juvenile Jurisdiction sentence.

Suggested change: Amend the rule 21.03 Subd. 1(A)(1) as follows:

(A) Final Orders. Final orders include orders for:
(1) certification to adult court where the child is under 16 or the presumptive sentence does not involve a commitment to the commissioner of corrections, whether the order is entered or stayed;

In addition, amend rule 21.03 Subd. 3(A) as follows:

Pending an appeal, a stay may be granted by the trial court or the court of appeals. A motion for stay initially shall be presented to the trial court.

In cases certified to adult court by final order, the district court shall stay further adult criminal proceedings, and may stay certification orders pending the filing of a final decision on appeal. By agreement of the parties, the adult case certified by final order may proceed through the omnibus hearing.

22. **Rule 22.03.** The rule allows the child's attorney or the prosecuting attorney to remove a judge without further showing of bias and interest if the judge has personal knowledge of the child or the child's social or juvenile court history, even if such knowledge was obtained as part of prior delinquency or juvenile court proceedings. The rule essentially presumes that the child's right to a fair trial is compromised when the fact finder possesses such knowledge. MCAA is unaware of any study supporting such a presumption and believes the presumption is misguided. Moreover, removing a judge with such knowledge may actually work contrary to the rehabilitative function of the juvenile court because it removes the judicial officer with the most personal knowledge. Finally, juvenile court represents a specialty practice area for a number of judicial districts. In areas of the state, there is no readily available replacement judge. Finding a new judge will cause unnecessary hardship and delay.

Suggested change: Amend the Rule as follows:

No judge shall preside over a trial or other proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request. ~~If the judge has personal knowledge of the child or the child's social or juvenile court history, even if such knowledge was obtained as part of prior delinquency or juvenile court proceedings, the child or prosecuting attorney may remove the judge without further showing of bias and interest.~~

23. **Rule 25.03 Subd. 1.** The rule requires notice of the first hearing after charging to be delivered by first class mail. The requirement is appropriate for the child and parents or persons with custody of the child. The requirement is also appropriate for the spouse of the child. With respect to the prosecuting attorney and the child's counsel, however, the requirement may prove to be a cumbersome and more costly replacement for notice mechanisms that are functioning quite well. If notice mechanisms are currently in use which are more appropriate, the rule should allow for their continued use.

Suggested change: Amend the rule as follows:

Subd. 1. First Notice by Mail. After a charging document has been filed, the court administrator shall schedule a hearing as required by these rules. A notice in lieu of summons shall be served ~~by first class mail on the following~~:

(A) by first class mail on child and parent(s) or person(s) with custody of the child, spouse of child and their counsel; and

(B) by any manner reasonably calculated to give notice on child's counsel; and prosecuting attorney, ~~spouse of child and their counsel~~.

24. **Rule 25.03 Subd. 3.** The rule provides for issuance of a warrant for the arrest of a child or parent who fails to appear after personal service of a summons or in a case in which the court has reason to believe the person is avoiding personal service. In a number of cases, however, personal service can not be made, nor can the court form a reasonable belief that the person is avoiding service. In short, reasonable efforts to locate and serve the person have failed. The court should be allowed to issue a warrant in such cases.

Suggested change: Amend the rule to incorporate language similar to that found in Rule 4.01 Subd. 1(B):

A warrant for arrest or immediate custody may be issued by the court for a child or parent(s) who fail to appear in response to a summons which has been personally served or in a case where reasonable efforts at personal service have failed ~~the court has reason to believe the person is avoiding personal service.~~

Although the comments of MCAA are lengthy and technical, the subject matter is of great importance to county attorneys. I speak on behalf of county attorneys in thanking the Court for its thoughtful consideration of these suggestions.

MINNESOTA CONFERENCE OF CHIEF JUDGES

RESOLUTION

RE: PROPOSED AMENDMENTS TO THE RULES OF JUVENILE PROCEDURE

The Conference of Chief Judges, having reviewed the proposed Amendments to the Rules of Juvenile Procedure, respectfully requests that the Supreme Court delay taking any action on all proposed Rules pertaining to the assignment of judges and the removal of judges in juvenile proceedings, including:

Proposed Rule 12.02	Reassignment of Fact Finder
Proposed Rule 18.06, subd. 3	Presiding Judge in Certification Proceedings
Proposed Rule 19.06, subd. 3	Presiding Judge in EJJ Proceedings
Proposed Rule 22.03	Interest or Bias of Judge
Proposed Rule 22.04, subd. 3	Automatic Removal of Judge

The Conference of Chief Judges further requests that it be given permission to submit more detailed analysis and/or alternatives to the Supreme Court not later than May 1, 1996.

Dated: February 16, 1996

Kevin S. Burke
Chair
Conference of Chief Judges

To: Members of Minnesota Supreme Court

From: Gerard W. Ring
Judge of District Court
Third Judicial District

Re: Proposed Rules of Juvenile Procedure

I suggest that the following changes should be made to the Rules of Juvenile Procedure as proposed by the Advisory Committee.

Rule 22.03 INTEREST OR BIAS OF JUDGE should be amended to read as follows:

RULE 22.03 INTEREST OR BIAS OF JUDGE

No judge shall preside over a proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request.

No judge shall preside over a trial if that judge has personal knowledge of the child or the child's social or juvenile court history, even if such knowledge was obtained as part of prior delinquency or juvenile court proceedings, unless otherwise agreed by the child and prosecuting attorney.

The Rule would then read as follows:

RULE 22.03 INTEREST OR BIAS OF JUDGE

Comment--Rule 22.03

While I am in basic agreement with Rule 22.03, I believe as it has been proposed by the Advisory Committee, it is overly broad. Accordingly, I am proposing some modifications to that section which I believe would meet the objectives of the Committee and also the needs of the juvenile justice system.

I propose to change the first sentence by deleting the language "trial or other" in order to emphasize the distinction I wish to make between trials and other juvenile court proceedings. I believe that there is a difference in fact between trials and other proceedings and that the rules should recognize that distinction.

In discussions of the new rules, the opponents of Rules 22.03 and 22.04 Subd. (3) assert that judges can put aside any prior knowledge and will rule fairly in juvenile hearings even if they have prior knowledge of the child. I too believe that I am a fair-minded person. But I am also aware that not everyone shares my own perception of myself. I fully agree with the Advisory Committee comments on these rules about the importance of those perceptions.

I think it is also important to keep in mind that even fair-minded people can make mistakes and certain conditions can make that more likely. This is particularly true in fact finding situations. I think the best illustration of this principle comes from sporting events. A few weeks ago I watched a football game in a room with a small group of people about equally divided in their loyalties to the two teams. As usual there were several close "judgment" calls by the referees during the game. A judgment call is one where the referee essentially makes a fact finding. For example, the rule is that a pass is complete if a receiver has possession of the ball before he goes out of bounds. The referee makes a judgment as to whether or not the receiver had the necessary control of the ball to qualify as possession under the rule.

Even with repeated slow motion replays, the people in that room could not agree on a number of close plays during that game. The people watching the game that day were all intelligent people with good common sense. While they were supporters of their teams, they were not the fanatical fans we sometimes see. They all had the same opportunity to view the identical play, yet they came to opposite conclusions on the crucial close plays. Not surprisingly, their conclusions happened to correlate very highly with their respective team loyalties.

I am sure everyone has had the identical experience and yet I think we overlook it sometimes when we as judges claim that we can be fair and impartial in spite of all odds. I can be conscious of my human frailties while presiding over court matters, but I cannot escape them. Even though I would like to be objective when watching a football game, I find myself disagreeing with equally conscientious people who are fans of the other team on the close plays.

A judicial decision as to the meaning or application of the law requires few "judgment" calls. Just as the referees will not argue about the rules which govern a fair catch, only whether or not the facts in their judgment support a certain conclusion, judges are more likely to agree as to the principles of law than whether those principles applied to a certain set of facts leads to a given result. Findings of fact, after all, result in a great many judgment calls. As we tell jurors, in deciding fact questions one must decide which witnesses are to be believed and the weight to be given to their testimony. Those are judgment calls. It is a far different decision than an analysis of the law or the rules. Yet they are also decisions which are subject to the least amount of scrutiny. If I make a mistake on the law, it is easily corrected. Not so with mistakes of fact.

There are additional differences between trials and other juvenile court proceedings which justifies treating them differently under the rules. For instance, at the dispositional stage the judge will be given a great deal of information about the child, as well as the family background. Whether the judge acquires that information by reading the file, or by having heard it previously, is not likely to have a major impact on the outcome. There is, therefore, no advantage or disadvantage to either side by having a new judge decide upon a disposition for a new offense rather than a judge who has had prior dealings with the child. A new judge will have less information than a judge who has had the child before, only if the parties are derelict in presenting the full background to the new judge.

It is true that there may be some factual determinations to be made in many hearings besides the trial, but they are not as central to those proceedings as they are to a trial. However, if Rule 22 is limited to trials, it will have a relatively small impact on the system. I have not reviewed the actual statistics,

but I am sure you are well aware that a very small percentage of juvenile matters go to trial, most likely an even smaller number than in adult court. It may be that in a one-judge-county an outside judge would have to be brought in when a trial does take place. The number of such transfers would be exceedingly small for the entire state I am sure, and most counties would go for years without having to bring in another judge. The outside judge would not have to return for the dispositional hearing or reviews so it would not be an ongoing issue. Certainly in this age of victim statements and extensive predispositional reports, one can have an adequate basis for a dispositional decision without having tried the matter.

Rule 15.05 DISPOSITIONAL ORDER should be amended to read as follows:

RULE 15.05 DISPOSITIONAL ORDER

Subd. 2. Consideration; Findings.

(A) The delinquency dispositional findings and order shall be written for any offense that would be a felony if committed by an adult. For all other offenses they may be made orally on the record.

(B) The dispositional order made by the court shall contain findings of fact to support the disposition ordered and shall set forth the following information:

Respectfully submitted,

Gerard W. Ring

District Court of Minnesota
THIRD JUDICIAL DISTRICT

JOHN A. CHESTERMAN
JUDGE OF DISTRICT COURT

February 9, 1996

FREEBORN COUNTY COURTHOUSE
411 SO. BROADWAY
ALBERT LEA, MINNESOTA 56007
TELEPHONE 507 377-5166

Frederick K. Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Juvenile Rules

Dear Mr. Grittner:

The new proposed juvenile rules do not seem to have an equivalent to the current Rule 15.03. It would be helpful to have an option to have either a juvenile admission/guilty plea or disposition/sentencing done in writing without the personal appearance of the child when all parties, including the child's parent(s) and attorney, consent in writing. The new rules seem to prohibit this. An example would be a child in a treatment facility 400 miles away. The child would have to spend 16 hours in travel time to appear in court for 10 minutes to admit a misdemeanor level offense.

The disclosure limits in new Rule 30 could be clarified as to what information can be given to a judgment creditor. If a victim cannot obtain full restitution while a child is on probation, it should be possible to enter a judgment in favor of the victim and dismiss the child from probation. In such a case the potential judgment creditor needs to file an affidavit setting out data on the judgment debtor (per M.S. § 548.09, subd. 2). Can the court disclose information to the judgment creditor about the juvenile needed for restitution?

Sincerely,

John Chesterman
Judge of District Court

JC:lc

District Court of Minnesota

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE LARRY G. JORGENSON

WARREN, MINNESOTA 56762 (218) 745-4951
FAX (218) 745-4343

March 10, 1996

Honorable A. M."Sandy" Keith
Chief Justice
Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue,
St. Paul, Minnesota 55105-6102

C6-84-2165

Re: Comments to Proposed Juvenile Procedural Rules

Dear Chief:

Thank you for the opportunity to submit my comments to the proposed rules in writing. I really tried to do it in person but mother nature interfered in a manner with which I could not argue. I have added comments following my suggested changes that briefly explain my reasoning. For the most part the comments are sufficient, but on some rules additional explanation is needed. I will try to do that here and, in the process, answer some of your questions.

First though, I compliment the committee members for the tremendous time and effort they put into the preparation of the proposed rules. As I wrote to them, I am not seeking to demean what they have done, it is just that I cannot agree with some of their recommendations.

There are, as I see it, two issues before The Court: The proposed juvenile procedural rules themselves and a side issue of how much substantive law procedural rules should contain.

The proposed rules are much too long and detailed. While such detail is extremely difficult for anyone to work with, I am making no objection to it, unless, in my judgment, it interferes with the effective and efficient administration of juvenile court

or is too substantive in nature. Some of the language is so broad and all encompassing that it works against the best interests of the children it seeks to protect. Some of the language is so narrow it is unworkable.

To put my suggested changes and comments in perspective, we need only look at the tone of the proposed rules. They are intended to implement M.S. 260 on juvenile delinquency which states as its purpose: "...to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." Procedural rules should support this statutory purpose. The proposed rules do not. They state their purpose "...is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota and to assure that the constitutional rights of the child are protected...." (underlining added and which is new language). Deleted from the expressed purpose was the statutory language relating to the rehabilitation of the child and protection of the public (public safety). The new language coupled with the deleted language creates proposed rules much narrower in scope than previous and focuses almost exclusively on the protection of the child rather than on the broader purpose of the juvenile delinquency statute. This focus is consistent throughout the proposed rules as they seek, in substantive areas, to limit the discretion of police officers, corrections officers, attorneys and judges. To propose such on procedural matters is one thing but to do so on substantive matters is quite something else. Because, if my understanding is correct, it is legislative statutes and case law that create substantive law, not procedural rules.

This focus becomes quite clear by looking at two of the proposed rules. Rule 15.02 Subd. 2 (B)(1) states "Necessity." It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct...." I have reread this rule many times trying in some way to put a procedural spin on it but I just cannot do it. This rule is substantive, period, and is an effort through the use of procedural rules to make a legal determination on what is or what is not necessary to justify a disposition order. That is the prerogative of the judge sitting on the case. If one of the parties disagrees with it, the option is to appeal and be subject to the standards that apply in such cases. Only through the normal judicial procedures are the rights of ALL parties given a fair hearing. In fact, Rule 15.02 Subds. 2, 3, and 4 are mostly expressions of substantive philosophy rather than procedural rules.

Rule 5.03 is similar in focus. It relates to the detention

of juveniles and, as it also relates to discretion, it sets out what is to be a basis for such. Subd. 1 states: "Presumption for unconditional release. The child shall be released unless:

(A) the child would endanger self or others; or
(B) the child would not appear for a court hearing; or
(C) the child would not remain in the care or custody of the person into whose lawful custody is released; or
(D) the child's health or welfare would be immediately endangered." (underlining added).

This rule sets an impossible standard. There no way that any child could be detained under this standard because of the certainty it requires. The argument for the rule was that it requires common sense be used in its application. That would be good and what should be done but the rule does not provide for it. It, in fact, prohibits it. There is no room for common sense. The purpose of the rule is that juveniles not be detained unless it is necessary. I agree with that purpose but there are times a juvenile must be detained. That being said, the rule is substantive in its entirety and not procedural at all.

Further comment is necessary on Rule 15.05 Subd. 2. The language of the entire rule is troubling. It is, as stated, substantive on its face but it also may differ with the disposition principles each district established and published following the recommendations of the task force and directed by statute. These principles set forth what is to be considered for dispositions on each juvenile that appears and is adjudicated by the court. Each district adopted and published its own principles and although they are probably all similar, I doubt they are identical. (A copy of the disposition principles adopted by the 9th District is attached). The proposed rule may be similar to the principles established by the districts, but if different it would obviously cause considerable problems. The proposed rule is really not needed for a reviewing court to consider the propriety of an ordered disposition. The principles of each district should be sufficient. The rule, if adopted, would be difficult to apply in a practical sense because of its "absolute." For example, (B) (1) "...It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct...." As in Rule 5.03 Subd 1 relating to detention, I do not believe a disposition can be made with that certainty given the propensity of people and the human limitations we, certainly I, possess. This rule must be read with proposed Rule 21.03 Subd 1 on appeals.

Rule 15.05 Subds. 3 and 4: The proposed rules are a blatantly substantive effort to restrict the discretion of the judges. The statute provides for the discretion. There is no reason for procedural rules to limit it.

I did recommend a few changes in rules setting time periods. Moving juvenile cases along quickly is important. Some of the

time periods were so short that there was not sufficient time allowed to do an adequate job by the prosecuting authority or the defense attorney on a difficult case and no way to provide the needed time. I agree that times be kept as short as is practical. I also believe that it is more important to give the parties a full and fair hearing and do it right rather than to do it in a hurry.

Rule 2.05: Ex-parte Communications. Juvenile Court is a unique court. It is criminal and yet it is not. The issue of guilt should be protected the same as in adult court, but the disposition should be open. Often the disposition involves the family and how the child functions in it. To require the parents and probation officer to disclose everything in open court in front of the child would put serious stress on that family relationship and the relationship the probation officer must maintain with the child if the probation is to be successful. Full disclosure would be a detriment to the disposition aspect of juvenile court. In addition, as with so many of the proposed rules, the language is so broad that a request for a detention order by a probation officer and any information submitted to support it would be excluded. This rule must be read in conjunction with Rule 22.03. Juvenile court must have latitude to deal with the juveniles if it is to be effective. To put full adult limitations on it would destroy it. Juvenile court is not adult court and it should not be treated so. Ex parte communications were not an issue brought forward by the public at any of the juvenile task force hearings.

Rule 3.03 and Rule 3.04: Dual Representation And Waiver Of Right To Counsel. My suggested changes in these rules are substantial and a marked departure from what is in place now. I have full confidence in the attorneys who practice before me and through out the state. Most will be members of the public defenders office, all of whom are concerned with the rights of their clients. They are all competent. It is reasonable that they are capable of giving the advisories without having the judge repeat them in open court. If the attorney states, on the record, that the child has been so advised and the child seeks nothing further, the court should be able to accept that, with no further inquiry. Juveniles are quick to raise an issue if they feel imposed upon so I have no concern there either. It just makes sense to me to handle the matters as suggested because I believe it will fully protect the juvenile's rights.

Rule 5.04: Relates to the "36" Hour Rule. At the beginning of the rules committee meetings, I suggested that the rules follow the adult rules where they fit. To some degree the proposed rules do that. However, as in this rule, some important elements are left out. The proposed rule did not provide for the availability of a judge. It requires for the release of the child after the expiration of the time period no matter what the

charge or what danger exists to the child or others. The courts exist in the real world and the rules must reflect that. The changes I suggest fully protect the child.

Rule 6.04 Subd. 2: Amendments Prohibited. Again, we are talking about a proposed rule that is so broad that it excludes the good. If the prosecuting authority, the defense attorney, the parents and the child agree, it makes little sense for it not to be allowed. The petition can always be dismissed and refiled, but why force this unnecessary procedure. This issue was discussed by the task force but no recommendation was made on it because of time. There seems to be considerable support for allowing a CHIPS disposition from a delinquency adjudication if the information received during a social history, for example, suggests that the child's problems are more related to the home environment than criminal. Where the resolution of this issue will end up is unknown at this time. Methods of improving services to the parties, which contribute to the efficiency of the court should be encouraged, not prohibited. The language of the proposed rule would prohibit it. I am not suggesting a rule that allows the amendments, just that the rule should not bar it. The entire subdivision should be deleted.

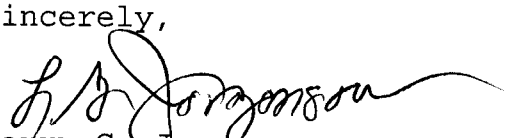
The presumption of bias rules are not needed and would set a dangerous precedent if adopted, not to mention the tremendous logistic problems created by juggling judges around to fill the gaps. I am sure you have received many comments about these rules so I will not go into detail. One note may be of interest, however. My memory has some blank spots from time to time, but I do not remember this issue being raised at any of the hearings or meetings we had with the juvenile task force except by one public defender and two members of the task force. It was not an issue the public was concerned with.

I have not addressed every change I suggested to the proposed rules because the comment following the change sufficiently states the reason. Because I have not addressed it here does not mean that it is not important. All of my suggested changes are important, at least to me. They do not impede the protection of the child, as the proposed rules deem important, but they do provide more latitude to police officers when they may or may not detain a child and for the statutory discretion of the judges. We must be mindful also of allowing procedural rules being used as a pronouncement of substantive law. The proposed rules do way too much of that. In juvenile court, because of its very nature, wide discretion is needed. Great flexibility must be allowed, as the statute provides, in order for new and innovative dispositions by the courts and to meet the individual needs of the child.

If you will indulge me, please, one more expression. Juvenile court works with the very fundamentals of our society,

the families and the children in them. It must be a practical court. It works with life on the basic level; with real life issues and people and is not a philosophical exercise.

Sincerely,



Larry G. Jorgenson
District Judge

Encl.

cc Hon Leslie Metzen, Chair
Juvenile Rules Committee Members

The following rules have been changed:

1.02
2.01
2.05
3.02 Subd. 5,6,&7
3.03
3.04
4.01
5.02
5.03 Subd. 1,2&4
5.04 Subd. 1&2
5.07 Subd. 1&5
6.02 Subd. 1
6.03 Subd. 1
6.04 Subd. 1&2
6.06 Subd. 1
8.03
8.04 Subd. 2
12.02
12.03
13.02 Subd. 4
13.06
15.02 Subd. 3
15.03 Subd. 2
15.05 Subd. 2,3&4
15.08 Subd. 8
18.01
18.02 Subd. 4
18.04 Subd. 1&4
18.05 Subd. 4
18.06 Subd. 1&3
19.03 Subd. 4
19.04 Subd. 1
19.06 Subd. 3
19.08 Subd. 2
20.02 Subd. 4
21.01
21.03
22.03
22.04 Subd. 2&3
23.05 Subd. 3
25.03 Subd. 1

PRINCIPLES FOR JUVENILE DELINQUENCY DISPOSITION
As adopted on February 3, 1995, by the Judges of the Ninth Judicial District

Pursuant to and in compliance with Chapter 576, Section 59 of the 1994 Minnesota Session Laws, the judges of the Ninth Judicial District of the State of Minnesota did on December 14, 1994, in Brainerd, Minnesota, on December 15, 1994, in Bemidji, Minnesota, and on December 16, 1994, in Thief River Falls, Minnesota, consult with local county attorneys, public defenders, local corrections personnel, victim advocates and the public at a general public meeting about dispositional principles to be used in making dispositional decisions on juvenile delinquency matters. Based thereon, the judges of the Ninth Judicial District of the State of Minnesota hereby adopt the following as principles to be used in making juvenile delinquency dispositions.

The statutory purpose of juvenile court is the rehabilitation of the child and, if the child is removed from the home setting, to rehabilitate the child and reintegrate the child back into the family. That purpose is the goal of these principles.

The principles are broken into three general categories: The offense, the child, and the child's family. They are in no particular order of importance and the relative importance of one to the other may change depending upon the circumstances of a particular situation. The most influential principles, however, are the current offense and the child's prior offense history.

A. The crime.

1. The circumstances surrounding the offense.*

2. Whether the offense was directed against persons or

property, the greater weight being given to an offense against persons, especially if personal injury resulted.*

3. The seriousness of the offense in terms of community protection.*

4. Whether the crime was committed in an aggressive, violent, premeditated or willful manner.*

5. The reasonably foreseeable consequences of the act.*

6. Whether the child acted with particular cruelty or disregard for the life or safety of another.*

7. Whether the offense involved a high degree of sophistication or planning by the child.*

8. The age and vulnerability of the victim.

9. Whether it was a gang related offense.

10. Any other factor that may have arisen at the crime which may affect disposition.

B. The child.

1. Age.

2. Gender (There are fewer alternatives available for females if an out-of-home placement is to be considered).

3. The child's delinquency history.

4. The child's prior juvenile court involvement.

5. Whether the child is under court supervision at the time of the commission of the offense.

6. Success or lack thereof of prior court ordered dispositions.

7. The sophistication and maturity of the child as determined by consideration of the child's home, environmental

situation, emotional attitude and pattern of living.*

8. What hours the child keeps (what time the child is home at night, whether the child has a curfew or other hour limitations that may be imposed by the family).

9. The child's discipline problems in the home.

10. The child's prior history of substance abuse or mental health adjustment.

11. Whether the child is a leader or a follower.

12. The age of the child's friends or "running mates".

13. The school.

a) the child's grades (is the child working up to his or her ability),

b) the child's school attendance - whether tardy or absent,

c) extra-curricular involvement and the success of that involvement,

d) leader or follower in school,

e) friends and types of friends,

f) age of friends,

g) a teacher who is a friend or any other close relationship that may exist with school personnel,

h) the child's discipline problem in school,

i) whether the child is involved in special education classes of any type,

14. Any other factor that relates to an insight of the child and his functioning.

C. Family.

1. The size of the family and where in the family structure the child lies age-wise.

2. The type of household relationship in which the child resides (whether the relationship be with his biological parents or parent, adoptive, extended family, live-in, or otherwise).

3. Substance abuse or usage or mental health adjustment within the family household.

4. Physical or sexual abuse history in the family.

5. Criminal history of the family.

6. Leadership in the household. Who set and controls rules of the household?

7. Is the child afraid of the head of the household or is the head of the household afraid of the child?

8. If on probation over prior court involvement, does the head of the household cooperate with probation personnel in their rehabilitative efforts for the child?

9. The child's significant extended family and its location.

10. Culturally specific factors that may be relevant to the rehabilitation of the child.

11. The child's relationship with his siblings.

12. Identifiable barriers to family intervention and to reintegrating the child back into the family should he or she be removed.

* Some of the principles included herein are lifted directly from the former Juvenile Court Delinquency Rule 32.05, Subd. 2. because they fit the purposes of the principles we are defining.

STATE OF MINNESOTA PUBLIC DEFENDERS
NINTH JUDICIAL DISTRICT
DONALD J. AANDAL, PAMELA J. AANENSON AND DAVID W. DEGROAT
213 N. LABREE, P.O. BOX 747 218-681-0952
THIEF RIVER FALLS, MN. 56701 1-800-957-0682 FAX: 218-681-0954

February 26, 1996

Frederick R. Grittner
Clerk of Appellate Courts
Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN. 55155-6102

RE: Proposed Minnesota Rules of Juvenile Procedure
As Amended by Judge Jorgenson on 2-21-96

Dear Mr. Grittner:

Our office has had an opportunity to review the above-named amended juvenile rules and are in agreement with them. We are especially in agreement with Rule 3.03 Duel Representation, as amended, and with Rule 3.04 Waiver of Right to Counsel, as amended. We believe these rules will simplify the procedures and will protect the rights of the juvenile without being unduly burdensome on any of the parties. Thank you for your consideration.

Sincerely yours,

Pamela Aanenson mbg

Pamela J. Aanenson
Donald J. Aandal
David W. DeGroat
213 N. LaBree
P.O. Box 747
Thief River Falls, MN. 56701

cc: Judge Larry Jorgenson