STATE OF MINNESOTA

IN SUPREME COURT

C2-95-1476

IN RE: DEADLINE FOR COMMENTS ON PROPOSED RULE ON PUBLIC ACCESS TO RECORDS RELATING TO OPEN JUVENILE PROTECTION PROCEEDINGS

WHEREAS, by order dated January 22, 1998, this Court established a three year pilot project using open hearings in juvenile protection proceedings and appointed an advisory committee to consider and recommend rules regarding public access to records relating to open juvenile protection hearings; and

WHEREAS, the Advisory Committee on Open Hearings in Juvenile Protection Proceedings has filed its Final Report, dated April 15, 1998, recommending adoption of a Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings ("Proposed Rule"); and

WHEREAS, it is the intention of the Supreme Court to adopt the Proposed Rule.

IT IS HEREBY ORDERED that:

1. Any individual wishing to provide statements in support or opposition to the proposal shall submit twelve copies in writing addressed to the Clerk of the Appellate Courts, 25 Constitution Avenue, St. Paul, MN 55155, by May 15, 1998.

2. The pilot project shall begin June 22, 1998.

Dated: April 15, 1998

By the Court:

K. A. Blatz

Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

C2-95-1476

In Re:

Pilot Project on Open Hearings in Juvenile Protection Matters

RECOMMENDATIONS OF MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON OPEN HEARINGS IN JUVENILE PROTECTION MATTERS

Final Report: Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings

April 15, 1998

Hon. Heidi S. Schellhas, Chair

Mark Anfinson
Candace Barr
Kate Fitterer
Hon. Donovan W. Frank
Susan Harris
Mary Jo Brooks Hunter
Tom Hustvet
Hon. Gregg E. Johnson
Marieta Johnson
Deb Kempi
Hon.Thomas G. McCarthy
Hon. Gary J. Meyer
Richard Pingry
Warren Sagstuen
Dr. David Sanders
Hon. Terri J. Stoneburner
Erin Sullivan Sutton
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Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Introduction

The Advisory Committee on Open Juvenile Protection Hearings (Committee) was established by the Minnesota Supreme Court to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. The Supreme Court ordered the Committee to file its recommendations with the Supreme Court on or before April 15, 1998. After one half-day session and three full-day sessions, the Committee agreed to recommend the proposed rule set forth on pages one through nine of this report.

The proposed rule includes a **comment section** that attempts to explain the Committee's intent and rationale. The Committee recommends that the Supreme Court retain the comments to the proposed rule, if adopted, for the benefit of those who will have to interpret the rule.

An **effective date** provision is incorporated in the proposed rule (see subdivision 2). Although this is typically addressed in court orders promulgating rules, the Committee felt that it should be codified in the rule for easy reference by pilot project participants.

Training will be important to the success of the pilot project. The Committee recommends that the State Court Administrator's Office be directed to provide training to court staff in the pilot project counties.

Certain **background materials** are appended to the report for convenience. Appendix A is the order establishing the pilot project and appointing the Committee. Appendix B is the Conference of Chief Judges Report recommending the establishment of a pilot project.Appendix C summarizes the recommendations of the Foster Care and Adoption Task Force, which first proposed open hearings in juvenile protection proceedings. Finally, Appendix D attempts to identify some of the documents potentially found in juvenile protection files. These materials represent an outline of the scope of issues addressed by the Committee. Time simply does not permit a more detailed discussion of the Committee's deliberations.

DATED: April 15, 1998

Respectfully Submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON OPEN
JUVENILE PROTECTION HEARINGS

Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Subdivision 1. Presumption of Public Access to Records.

Except as otherwise provided in this rule, all case records relating to the pilot project on open juvenile protection proceedings are presumed to be accessible to any member of the public for inspection, copying, or release. For purposes of this rule, "open juvenile protection proceedings" are all matters governed by the juvenile protection rules promulgated by the Minnesota Supreme Court.

Subdivision 2. Effective Date.

All case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. All case records deemed accessible under this rule and filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release.

Subdivision 3. Applicability of Rules of Public Access to Records of the Judicial Branch.

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to records relating to open juvenile protection proceedings. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

Subdivision 4. Records That Are Not Accessible to the Public.

Except for exhibits identified in subdivision 5 of this rule, the following case records relating to open juvenile protection proceedings shall not be accessible to the public:

(a) transcripts, stenographic notes and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge;

(b) audio tapes or video tapes from the social service agency;

(c) victim's statements;

(d) portions of juvenile court records that identify reporters of abuse or neglect;

(e) HIV test results;

(f) medical records and chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;

(g) sexual offender treatment program reports;

(h) portions of photographs that identify a child who is a subject of the petition;

(i) ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue;

(j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings pursuant to 25 U.S.C. § 1912 (the Indian Child Welfare Act); and

(l) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public.

Subdivision 5. Access to Exhibits.

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order.

Subdivision 6. Access to Court Information Systems.

Except where authorized by the court, there shall be no direct public access to juvenile court case records maintained in electronic format in court information systems.

Subdivision 7. Protective Order

Upon motion and hearing, a court may issue on order prohibiting public access to juvenile court case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting issuance of the order. The court may also issue such an order on its own motion and without a hearing pursuant to subdivision 4(l) of this rule, but shall schedule a hearing on the order as soon as possible at the request of any person.

Subdivision 8 Case Captions.

All juvenile protection files opened in a pilot project county on and after June 22, 1998, shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian as follows: "In the matter of child(ren) of _____, parent/legal guardian/legal custodian."

Advisory Committee Comment-1998

Under subdivision 1, application of this rule is limited to case records of the pilot project on open juvenile protection proceedings, which includes all proceedings identified in Rule 37 of the Minnesota Rules of Juvenile Procedure (1997) and any successor provision. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998). Rule 37 as currently written does not include adoption proceedings. Thus, this rule would not apply to any case records relating to adoption proceedings. The Committee is aware that the juvenile protection rules are in the process of being updated by another advisory committee. To the extent that there are substantive changes made to Rule 37, those changes would effect the pilot project.

Subdivision 1 establishes a presumption of public access to juvenile court case records, and exceptions to this presumption are set forth in the remaining subdivisions. Subdivision 2 specifies the effective date of the pilot project as the cut off for public access. Case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. Case records filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release under this rule; pubic access to these records is governed by existing rules and statutes.

Subdivision 3 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define "case records" as a subcategory of records maintained by a court. Thus, "case records" would not include items that are not made a part of the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on juvenile court cases that do not identify any participants or a particular case are included in the "administrative records" category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures

and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Participants in a juvenile protection case may have greater access rights than the general public. *See, e.g.*, Minn.R.Juv.P. 64.02, subdivision 2 (1997).

Subdivision 3 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (1996). The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minn. Stat. § 518B.01, subd. 3b (1996). All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subdivision 1(a) (1998).

Subdivision 3 prohibits public access to judicial work products and drafts. These include notes, memoranda and drafts prepared by a judge or court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a decision or order, except the official court minutes prepared pursuant to Minn. Stat. § 564.24-.25 (1996). Access Rule 4, subd. 1(c) (1998).

The court services provision of Rule 4, subdivision 1(b) of the Access Rules, is inconsistent with this rule. The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the pilot project. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed by the presiding judge. The Supreme Court has directed that hearings under the pilot project may be closed or partially closed by the presiding judge only in exceptional circumstances. *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998).

Subdivision 4(b) prohibits public access to audio tapes and video tapes from the social service agency. This is consistent with Minn. Stat. § 13.391 (1996), which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. *See also In re Application of KSTP Television v. Ming Sen Shiue*, 504 F.Supp. 360 (D.Minn. 1980) (television station not entitled to view and copy 3 hours of video tapes received in evidence in criminal trial). Subdivision 4(c) prohibits public access to victims' statements, and is consistent with Minn. Stat. §§ 609.115, subds. 1, 5; 609.2244; 611A.037 (1996 and 1997 supp.) (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio tapes and video tapes from the social service agency are inaccessible to the public under subdivisions 4(b) and 4(c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, subdivision 4(d) prohibits public access to "information identifying reporters of abuse or neglect." By precluding public access to "information" identifying reporters of abuse or neglect, the advisory committee did not intend to preclude public access to any other information included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available for inspection and copying by the public. Similarly, subdivision 4(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child.

The prohibition of public access to the identity of reporters of abuse or neglect under subdivision 4(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools and other agencies. Minn. Stat. § 626.556 (1996 and Supp. 1997). Subdivision 4(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. *See* 42 U.S.C. §§ 5106a(b)(2)(A); 5106a(b)(3) (1998); 45 C.F.R. §§ 1340.1 to 1340.20 (1997). Subdivision 4(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Subdivision 4(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (1996) (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. §§ 300ff-61(a); 300ff-63 (1998).

Subdivisions 4(f) and 4(g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records and sex offender treatment program reports, unless admitted into evidence (see subdivision 5). This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. *See, e.g.*, Minn. Stat. § 609.115, subd. 6 (1996) (presentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance

abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant consents or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. *See* 42 C.F.R. §§ 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 1417, and 11432 (1998); 34 C.F.R. §§ 99.1 to 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect prior to November 19, 1974. 20 U.S.C. § 1232g(b)((1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect prior to that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178, § 10, (repealing section 120.12 and replacing with current section 120.103, which adds mediation process before notice to county attorney); *see also* Minn. Stat. §§ 260A.06-.07 (1996) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Subdivision 7).

Subdivision 4(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to limit or avoid disclosure of the whereabouts of the child prior to the hearing where all parties can be heard on the custody issue. *See. e.g.*, Minn.R.Juv.P. 51 (1997)

(order for immediate custody; parent, guardian and custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody).

Subdivision 4(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Subdivision 4(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (1996). Thus, the term "sexual assault" includes any act described in Minnesota Statutes, sections 609.342, 609.343, 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." *See* Minn. Stat. § 626.556, subd. 2(a) (1996) ("sexual abuse" includes violations of 609.342-.345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Subdivision 4(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Subdivision 4(k) precludes public access to the notice of pending proceedings given to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information on the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee felt that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Subdivision 4(k) does not preclude public access to intervention motions or transfer petitions.

Subdivision 4(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Exceptional circumstances is the standard promulgated by the Supreme Court for closure of portions of proceedings. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998) Records of closed proceedings are inaccessible to the public under subdivision 4(a). Procedures for issuing protective orders are set forth in Subdivision 7.

Notwithstanding the list of inaccessible case records in subdivision 4(a) through 4(l), many case records of the pilot project will typically be accessible to the public. Examples include: petitions other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and

supporting affidavits and legal memoranda; transcripts; and reports of a social worker or guardian ad litem. With the exception of information that must be redacted under subdivisions 4(d), 4(e) and 4(h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or court services report recommending placement might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation is not accessible to the public, the discussion of it in the social services or court services report need not be redacted prior to public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court prior to the effective date of the pilot project (see subdivision 2) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see subdivision 3).

Subdivision 5 of this rule permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see subdivision 7). Thus, any of the records identified in subdivisions 4(b) through 4(k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under subdivision 5. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public under subdivision 5.

Subdivision 6 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Subdivision 6 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Committee to recommend that case titles in the petition and other documents include only the names of the parent or other guardian, and exclude the names or initials of the children (see subdivision 8). Subdivision 6 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, subdivision 6 allows the court to make those accessible to the public, for example, by order of the chief judge of the judicial district.

Subdivision 7 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. *See Order Establishing Pilot*

Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998). The advisory committee felt that these procedures would provide adequate protection and flexibility during the pilot project.

The change in case captions under Subdivision 8 is designed to minimize the stigma to children involved in open juvenile protection proceedings. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

APPENDIX A

STATE OF MINNESOTA
IN SUPREME COURT
C2-95-1476

AMENDED ORDER ESTABLISHING PILOT PROJECT ON OPEN HEARINGS IN JUVENILE PROTECTION MATTERS

WHEREAS, the Supreme Court Foster Care and Adoption Task Force recommended that hearings in juvenile protection proceedings be presumed open absent exceptional circumstances and that the corresponding juvenile file be accessible to the public, except for certain documents and reports; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges held a hearing on the Task Force recommendation on November 21, 1997; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges, the Conference of Chief Judges Administration Committee, and the full Conference of Chief Judges recommended that this Court establish an open hearings pilot project in representative metropolitan, suburban, and rural jurisdictions to be evaluated by an independent research organization; and

WHEREAS, open hearings in juvenile protection proceedings are authorized in other states, (See e.g. Michigan Rules of Juvenile Procedure 5.925(A); 22 New York Codes, Rules, and Regulations 205.4; and *Oregonian Pub. Co. v. Deiz,* 613 P.2d 23 (Or. 1980));

NOW, THEREFORE, by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate public access to records and proceedings of the judicial branch, IT IS HEREBY ORDERED that:

1. Subject to the requirements of this order and rules promulgated by this Court, each judicial district is hereby authorized to conduct a three year pilot project in one or more counties designated by the chief judge of the district, using open hearings in the following juvenile court proceedings: child in need of protection or services proceedings including permanent placement proceedings, termination of parental rights proceedings and subsequent state ward reviews.

2. Open proceedings authorized pursuant to this order shall be presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances.

3. The pilot projects shall begin June 1, 1998.

4. The State Court Administrator, in consultation with the Conference of Chief Judges and this Court, shall contract with an independent research organization to conduct an evaluation of the pilot projects authorized pursuant to this order. On or before August 1, 2001, such organization shall file with this Court a report addressing the impact of open hearings and records.

5. The Minnesota Supreme Court Advisory Committee on Open Juvenile Protection Hearings is hereby established to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. The advisory committee shall file its recommendations with this Court on or before April 15, 1998. The following individuals are hereby appointed as members of the advisory committee:

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DATED: February 5, 1998

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APPENDIX B

CONFERENCE OF CHIEF JUDGES
SUBCOMMITTEE ON OPEN CHIPS
REPORT AND RECOMMENDATIONS

December 4, 1997

APPROVED BY THE ADMINISTRATION COMMITTEE ON 12/4/97.
APPROVED BY THE CONFERENCE OF CHIEF JUDGES ON 1/16/98.

THE SUBCOMMITTEE

The Subcommittee on Open Juvenile CHIPS proceedings[1] consisted of the following members of the Conference of Chief Judges: Chief Judge Meyer (10th) Chair; Chief Judge Metzen (1st); Asst. Chief Judge Cohen (2nd); Chief Judge Wolf (3rd); Chief Judge Mabley (4th); Chief Judge Gross (5th); Asst. Chief Judge Pagliacetti (6th); Asst. Chief Judge Landwehr (7th); Asst. Chief Judge Seibel (8th); and Chief Judge Murphy (9th).

The Subcommittee heard testimony from the following proponents of Open CHIPS: Mike Freeman, Hennepin County Attorney; Don Anfinson, MN Newspaper Assn.; Mark Toogood, Hennepin Guardian Ad Litem Program; Dr. David Sanders, Director, Hennepin Family and Children's Services. It also heard testimony from the following opponents of Open CHIPS: James Backstrom, Dakota County Attorney; Candace Rasmussen, Third District Chief Public Defender; Rob Scott, Assistant Anoka County Attorney; and Dr. Esther Wattenberg, Center for Urban Affairs. Judge Donovan Frank submitted letter testimony.

Proponents argue: that it is in the public interest to have legal proceedings open generally; that Open Juvenile protection hearings will foster accountability and public awareness; that they will help set "community standards"; that a large number of juvenile matters are public anyway (i.e., family and criminal); and the court can still close hearings when necessary to protect a child.

Opponents argue: that opening juvenile protection proceedings is not in the best interest of children; that any benefits of accountability and public awareness (if they exist) are outweighed by the risks of harm to the children; that children will be less likely to tell of abuse if they know it will be public; and that children may be revictimized as adults if the files are open to the public.

[1] Includes CHIPS, Termination of Parental Rights, and Foster Placement.

BACKGROUND

In January, 1997, the Supreme Court Foster Care and Adoption Task Force report recommended that hearings in Juvenile Protection proceedings be presumed open absent "exceptional circumstances" and that the corresponding juvenile file be accessible to the public, except for certain documents and reports. The Task Force was chaired by Judge Edward Toussaint, with Justice Kathleen Blatz as vice chair. Rep. Wes Skoglund was an active member of the task force.

Subsequently, the House Judiciary Committee, chaired by Rep. Skoglund, heard testimony, including Judge Toussaint and Justice Blatz, and recommended a pilot project. On the floor of the House, however, the bill was amended to include all jurisdictions, and passed by a substantial majority. The Senate passed a bill allowing certain limited access only. The bill is now in conference committee.

Subsequent to the Task Force report, and before the bill was passed in the House, the Conference of Chief Judges voted to recommend against Open CHIPS. The Conference also voted, by a less substantial majority, against a pilot project.

The Conference has been asked by Chief Justice Keith and Chief Justice designate Blatz to revisit the issue, as a pilot project, for selected counties.[2] There appears to be strong support in the Supreme Court for a CHIPS pilot project.

SUBCOMMITTEE CONCERNS

The Issue Belongs in the Control of the Judiciary. Most members of the subcommittee are not in favor of opening CHIPS proceedings; however, the subcommittee agreed that the issue of rules governing the conduct of the courts proceedings should be dealt with in the judicial and not in the legislative or executive branches of government.

Children's privacy needs to be protected. Safeguards need to be established to protect the privacy of the children to the extent possible. Limitations need to be in place regarding accessibility to the CHIPS file.

Accurate and Independent appraisals of the Pilot should be made. If pilot projects are initiated, they need to be thoroughly, accurately, and independently evaluated, by an outside independent organization. Self-reporting and anecdotal experience are not a good test of the pilots.

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[2]Chief Justice Keith has recommended that the pilot be in Hennepin, Houston, and Northern St. Louis Counties.

Judicial Discretion. Concern was expressed that if judges are allowed discretion to close in the same manner as now exists for non juvenile proceedings, the county attorney, public defender and guardians in many jurisdictions may ask to close every CHIPS proceeding; and that if the judge does not close the hearing, it could be considered an abuse of discretion because of the unanimous request.

RECOMMENDATIONS

THE SUBCOMMITTEE RECOMMENDS THAT THE SUPREME COURT ESTABLISH RULES FOR A PILOT PROJECT IN CERTAIN LIMITED JURISDICTIONS WHEREBY JUVENILE PROTECTION (CHIPS) PROCEEDINGS THERE WOULD BE PRESUMED OPEN, WITH THE FOLLOWING CONDITIONS:

1. **Subject of Pilot Project:** The pilot will focus on Hennepin County, and other jurisdictions which are representative of urban, rural, metro, and outstate, with the advise of the Conference of Chief Judges. Hennepin County has been the biggest advocate of Open CHIPS, and for that reason needs to be included in the Pilot; however, the balance of the jurisdictions do not need to be staunch advocates.

2. **Length of the Pilot Project:** The pilot will last for three years. Analysis of the project will commence after it has been in place for one year.

3. **Independent Analysis of Pilot Project:** The pilot project will be analyzed by an independent organization, such as the National Center for Juvenile Justice, with funds appropriated for that study. The study's focus will be on whether the pilots have succeeded in greater accountability and public awareness; whether juveniles have been adversely affected by the open CHIPS proceedings or public accessible files; and whether the press has been responsible in its reporting.

4. **CHIPS Files:**

    a. **Name.** The CHIPS files should be titled in the name of the parent(s) and not in the name of the child.

    b. **Inaccessible to Data Gatherers.** The CHIPS files should be inaccessible to Data Gatherers, such as those retained by credit bureaus and medical providers.

    c. **Sealed when closed.** The CHIPS files will be sealed when the child has been reunified, when parental rights are terminated, a long term permanency plan is completed and approved by the court, or when the case is closed.

d. **Certain documents inaccessible.** Some documents, such as Guardian Ad Litem reports should be publicly inaccessible when the file is open. (See Task Force Report, p. 124).

5. **Judge's Discretion to Close.**

Juvenile Protection matters are presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances. The request by all parties to close may be a factor to be used by the presiding judge in determining whether exceptional circumstances exist.

Judge Gary J. Meyer
Chair, Open CHIPS Subcommittee

APPENDIX C

LIST OF ACCESSIBLE AND INACCESSIBLE DOCUMENTS RECOMMENDED BY FOSTER CARE AND ADOPTION TASK FORCE

During their deliberations regarding accessible and inaccessible documents, the members of the Open Juvenile Protection Hearings Committee considered the following recommendation of the Foster Care and Adoption Task Force:

Court records in juvenile protection matters should be open to the public. However, certain information which is protected by law from public access should not be available to the public as well as other information which is of such a nature that public access to the information might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information about reporters. Statutes and court rules should be amended to specify what records within the court file are accessible to the public.

Accessible Documents

Accessible documents include those in which information is sufficiently detailed to allow the public to hold the agencies involved in the court process accountable, but not so intensely personal as to cause harm to children or discourage reporters from identifying victims of abuse or neglect. The following documents, if located in the court file should be accessible to the public:

- *CHIPS Summons and Petition;*
- *Parental Termination Summons and Petition;*
- *Affidavits of Publication;*
- *Petition for Transfer of Legal Custody;*
- *Petitions for Paternity;*
- *Affidavits of Service;*
- *Certificates of Representation;*
- *Court Orders;*
- *Hearing and Trial Notices;*
- *Witness Lists;*
- *Subpoenas;*
- *Motions and Legal Memoranda;*
- *Exhibits Introduced at Hearings or Trial, unless described below as "inaccessible" to public;*
- *Birth Certificates;*
- *All other documents not listed as inaccessible to the public.*

Inaccessible Documents

Those documents listed as inaccessible include those that if made accessible might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information about reporters. The following documents, if located in the court file should be inaccessible to the public:

- *Written, audio-taped, or video-taped information from the social service agency except to the extent the information appears in the petition, court orders or other documents that are presumed accessible;*
- *Child Protection Intake or Screening Notes;*
- *Any other documents identifying reporters of neglect or abuse, unless reporters' names and other identifying information are redacted;*
- *Guardian ad litem reports;*
- *Victims' Statements;*
- *Lists of Addresses and Telephone numbers of Victims;*
- *Documents Listing Non-Party Witnesses under the age of 18, unless the names and other identifying information of those witnesses are redacted;*
- *Transcripts of Testimony of Anyone Taken during Closed Hearing;*
- *Fingerprinting Materials of Anyone;*
- *HIV Test Results of Anyone;*
- *Psychological Evaluations of Juvenile;*
- *Psychological / Psychiatric Evaluations of Anyone;*
- *Chemical Dependency Evaluations;*
- *Pre-sentence Evaluations of Juvenile and Probation Reports;*
- *Medical Records of Anyone;*
- *Reports Issued by Sexual Predator Programs for Anyone;*
- *Diversion Records (i.e., records prepared by diversion programs, for example, relating to truancy, shoplifting, drug use, runaway, etc.) of Juvenile;*
- *Any document which the court, upon its own motion or upon motion of a party, deems inaccessible because doing so would serve the best interests of the child.*

Court records should be open only for cases filed after a certain date.

APPENDIX D

DOCUMENTS POTENTIALLY FOUND IN JUVENILE COURT FILES

Among the records considered by the Open Juvenile Protection Hearings Committee were:

1. referee findings and recommended orders,
2. case plans, 260.191, subd. 1e
3. informal review reports/orders/findings
4. formal review reports/orders/findings
5. pre-placement reports
6. foster placement reports
7. expert witness reports and recommendations
8. petition for adoption
9. petition for review of foster care status, 260.131, subd 1a
10. petition for habitual truant 260.131, subd. 1b
11. notice and summons (all types of cases) 260.135
12. emergency CHIPS petition, 260.133
13. temporary orders
14. affidavits (or other documents) accompanying or attached to petitions
15. dept. of corrections reports
16. residential placement reports
17. mental health screening tools, 260.152, subd. 3
18. questions submitted to court to question child victim
19. court minutes/transcripts/recordings, 260.161
20. index of files under child's name, 260.161, subd.1
21. register of documents contained in file, 260.161, subd. 1
22. peace officer records, 260.161, subd. 3
23. photographs of child
24. school records - truancy
25. protective orders precluding attys. from releasing records to clients, 260.165, subd. 3a
26. community program records, 260.165, subd. 3b
27. peace officer notice to parents regarding custody, 260.165, subd. 3
28. notice of placement in shelter care, 260.171.subd. 5a
29. shelter care facility report, 260.171, subd. 6(b)
30. social services intake documents/tools, 260.174, subd. 2
31. insurance information, 260.174
32. probation officer reports (truants or runaways)
33. permanent placement determination pleadings, 260.191, subd. 3b
34. home studies for PPD, 260.191, subd. 3
35. guardianship petitions or modifications, 260.245
36. appellate records
37. interstate compact reports, 260.51

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

THOMAS H. CAREY
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
(612) 348-2908

May 11, 1998

The Honorable Heidi Schelhas
Judge of District Court
Government Center
Minneapolis, Mn 55487

Dear Judge Schelhas:

I have reviewed the proposed rule on public access to records relating to open juvenile protection proceedings.

I am writing this letter in total support of the proposed rule. As a former Judge of the Juvenile Court, I can state unequivocally that public access is totally warranted. In addition, I find the alleged reasons to block such access to be totally pretextual.

Respectfully submitted,

Thomas H. Carey
Judge of District Court

WATCH

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

Dear Justice Blatz:

I am writing on behalf of WATCH in response to the opportunity to comment on the Proposed Rules on Public Access to Records Relating to Open Juvenile Protection Proceedings.

First, I would like to thank you for your bold move in deciding to open the Juvenile Court hearings and records pertaining to these cases. I know you have faced strong and vocal opposition in making this decision. While I don't believe that opening the court will solve all of the problems that exist within our Child Protection system, I do believe it is an important first step to better addressing the needs of the children who languish in unstable and violent homes.

For the past five years WATCH has been monitoring and evaluating the effectiveness of the criminal justice system in its handling of cases involving violent crimes committed against women and children. As part of that effort we have observed heartbreaking cases involving the monstrous pain and terror parents and/or their partners can inflict on their children.

Our interest in child protection cases has been piqued by the testimony we have witnessed in criminal court. It has become apparent through those proceedings that many of these families have been involved in the child protection system long before the abuse reached a level significant enough to prompt criminal prosecution. The question that always remains for us is whether our system did everything it could have done to protect this child. By opening juvenile court to these cases we may finally begin to answer that question.

As you know, in the past 20 years some remarkable changes have occurred in the way our society reacts, and our court system responds, to cases of domestic assault and criminal sexual conduct - although improvements remain to be made. Nearly all of these enhancements have come as a result of greater public awareness of these issues. Fortunately these movements have included courageous individuals who have been willing to speak out about their experiences as victims of these crimes. But who will speak for the children who know no other existence but that of abuse followed by foster care, followed by more

Suite 1001 Northstar East 608 Second Avenue South
Minneapolis, Minnesota 55402
612-341-2747

abuse and sometimes death?

WATCH has encountered many people who work within the Juvenile Court System who are anxious to acquaint the public with their daily battle to save our community's children. They have previously been silenced by outmoded data privacy laws. By being given the opportunity to observe and ask questions about what they do, we will begin to increase the public's understanding of our child protection system as well as hold decision makers accountable for their actions in these cases.

Our specific comments on the proposed rules are enclosed. Copies have been provided to the Clerk of Courts as is specified in the notice.

Sincerely,

Jacquelyn Hauser

Jacquelyn Hauser
Executive Director

enclosure

WATCH Comments on Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings

WATCH's concerns about the proposed rule relate in large part to how the rule will be interpreted and the resources that will be available to provide the information that will now be open to the public.

What Information Will Be Available By Phone
We assume that it will be possible to confirm the existence of an open case file by calling the clerk's office. Obviously, the caller would need to know the name of the child or one of the child's parents. However, the rules address only the records contained in the files and state that they are "accessible to any member of the public for inspection, copy or release."

Recent hearings by the Minnesota House Judiciary Committee into the death of Desi Irving point out the critical need for the community to be able to quickly and easily confirm the existence of a child protection case. While Mildred Irving (the convicted murderer of Desi) confessed her continued abuse of Desi to at least one person, she told that person that she had self-reported and continued to be involved with Child Protection. In fact, however, Mildred's case file had been closed and there was no continuing involvement with Child Protection. The ability to readily confirm Mildred's statement may have saved a child's life.

I foresee the need for many interested parties, particularly teachers and school social workers to be able to confirm the existence of open cases without having to go in person to Juvenile Court to determine whether or not an open case exists.

If we are correct in our assumption - that the rules would allow for cases to be confirmed by phone - it may be helpful to specify this in the rules or in the commentary.

When the Abuser is Not a Blood Relative
As is mentioned in our cover letter to Justice Blatz, WATCH follows many criminal cases involving child victims. Oftentimes the perpetrator in these cases is not a family member but has a relationship with the child's parent. In many instances it becomes clear from the criminal case that there has been child protection involvement with the family, but since the only name available in the criminal is that of the defendant, and that person is not a family member, it will be impossible to check on the status of the child protection activity with the family.

It would be helpful if petitions filed as a result of a criminal case would state that there is a companion criminal case. This won't help us in cases where the CHIPS file precedes the criminal complaint; perhaps those better acquainted with the system have ideas about the way this could be addressed.

Exceptional Circumstances
The proposed rule does not appear to define the "exceptional circumstances"

under which a judge may decide to close the proceeding. Perhaps this has been defined in other rules governing court proceedings. If it has not, however, we believe it is important to do so since the term is too vague to be consistently applied.

Evaluation
The proposed rule indicates that the formal evaluation will begin after one year. WATCH believes that an evaluation of court records should begin no later than six months into the pilot project and that the focus of that evaluation should be a review of the documents that are available to the public.

Without the ability to review a complete file, it will be impossible for the public and media to know whether documents are not being made available that should be. Court staff's interpretation of the rules is the most critical component of the effectiveness of the pilot project.

Resources
In our preliminary meetings with court staff we have learned that no additional resources have been made available for them to provide this newly available information to the public. The court should look carefully at the ability of court staff in the pilot project jurisdictions to deal with the increased workload that will most certainly result from opening court files. An overburdened court staff that is resentful of the demands made by the public and the media may distort the public's perception of the system as a whole.

Siblings of Abused Children
Kerri VanMeveren
Executive Director
115 Miss Ellie Circle
Belton, MO 64012

May 11, 1998

Clerk of Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

ATTENTION: Minnesota Supreme Court Advisory Committee for the Open Juvenile Protection Hearing

The Board of Directors for Siblings of Abused Children spent substantial time evaluating the proposed rules for the pilot project beginning on June 1, 1998 while also soliciting general feedback from members of the organization. It is of general consensus that this pilot project is of momentous importance to the state of Minnesota in it's attempts to promote increased public awareness and accountability within the system.

While many of the recommended rules have sound and well thought out ideas, there are some rules which we feel raises reason for concern due to lack of clarity and/or inclusiveness of the rule. For clarity purposes and in the interest of easy reference, we have broken our general comments into sections coordinating with the existing sections of the report and recommendations for each of the respective appendixes.

APPENDIX A

RULE NUMBER 2

The presumption of open proceedings is important and key to the success of the pilot program, however the language regarding the jurisdiction of "exceptional circumstances" is vague, ambiguous and leaves potential room for abuse of discretion thereby undermining the goals of the pilot. While it is important that safeguards are in place for proceedings to be able to be closed to preserve either evidence and/or the individuals involved, it is important especially during the pilot stages of this program to create guidelines. This serves to benefit all individuals involved as too often, those most affected by the ambiguous and misleading rules of the court are unable to challenge court opinion due to lack of resources and therefor fall mercy to the bias of the court.

It also to important to address the issue regarding the ability to request a reevaluation of the "exceptional circumstances" in the event that those conditions no longer exist or in the event that those involved feel that due to a bias of the court inappropriately prohibited public access to the respective participant in a specific case.

We strongly recommend that the individuals objecting to the motion to prohibit public access in their case the right to request "proof of exceptional circumstances" regardless of the two categories of protective orders used to close public access to their respective case. This could be helpful for many

reasons, the most important being that it would likely deter those objecting from making attempts to appeal the decision to prohibit public access. If proof of the exceptional circumstances was not provided, it would likely only create additional and unnecessary appellate requests served only to be denied after discovery of the "exceptional circumstances" was addressed through the process of the appeal.

Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

INTRODUCTION

We are in complete agreement with regards to the importance of ensuring proper and adequate training. Lack of education from one county to the next spells certain inherit problems that are likely to reflect poorly on the effectiveness of the pilot program.

SUBDIVISION 2. Effective Date.

ISSUE ONE

Eligibility for case records needs further clarification. The current wording of the ruling is not clear due to the fact that if a case has been a part of the system for one or more years, it is possible and most often quite likely that in a dysfunctional home for which periods of time may lapse whereby the file would be deemed closed by CPS only to have the file reopened several months or weeks later. The case being reopened would potentially give the case record a new file date.

Out of fairness to those individuals affected by this scenario should be allowed to be considered under the eligibility factors for the pilot project. It also only seems logical to allow these cases to be deemed eligible as Minnesota would not be pursuing a pilot project like this were it not for the problems already in existance within the system. There could be no better way to address problems within the system than to allow cases like those which make this pilot project so important.

ISSUE TWO

There seems to be a conflict of information within the information supplied on the proposed rules regarding the effective date or perhaps it is simply a lack of clarification regarding the definition of a "pilot project" and "pilot projects". On the initial motion declaring the WHEREAS and intentions of the Supreme Court that rule #2 states that "The pilot project shall begin June 22, 1998." Then following this rule #3 states "The pilot projects shall begin June 1, 1998". The only discernible difference aside from the dates is the pluralization of project to projects. Unless there is other information not supplied in the recommended rules, the first attempts of the project already become unnecessarily confusing.

The only explanation that we could determine based on the information provided was that the "**pilot project**" represents all those participating in the broad scope of the 3 year program. Whereas the "**pilot projects**" are those on an individual and/or county level participating in the scope of the pilot program. However, it seems only logical that the actual pilot program would begin prior to the

participation of the actual pilot project(s). For the sake of clarity, this needs to be addressed for the benefit of ALL the participants in the pilot.

SUBDIVISION 7. Protective Order

Here again, the issue regarding the issuance of an order prohibiting public access to juvenile court case records in references to the exceptional circumstances. As important is it is to provide the authority to the presiding judges the power to close access when deemed in the best interest of the children, it as equally important that the same safeguards are in place protecting what is in the best interest of the children when at the mercy of the bias of the court. The interpretation of exceptional circumstances will vary from one judge to the next and although it is not remotely possible to predict the potential situations that may arise where such a decision would be warranted, never the less, enacting safeguards to ensure compliance and deterring inclinations to abuse the power of the court.

It also to important to address the issue regarding the ability to request a reevaluation of the "exceptional circumstances" in the event that those conditions no longer exist or in the event that those involved feel that due to a bias of the court inappropriately prohibited public access to the respective participant in a specific case.

We strongly recommend that the individuals objecting to the motion to prohibit public access in their case the right to request "proof of exceptional circumstances" regardless of the two categories of protective orders used to close public access to their respective case. This could be helpful for many reasons, the most important being that it would likely deter those objecting from making attempts to appeal the decision to prohibit public access. If proof of the exceptional circumstances was not provided, it would likely only create additional and unnecessary appellate requests served only to be denied after discovery of the "exceptional circumstances" was addressed through the process of the appeal.

ADVISORY COMMITTEE COMMENT-1998

LINE NUMBER 99

This inclusion of such documents are absolutely essential to the underlying goals of this pilot project. The importance of this information can be stated any clear than this! We are in full support of this recommendation.

LINE NUMBER 194

The protection of minors from becoming identified in matters of criminal and juvenile delinquency proceedings involving sexual assault charges is very important. In the efforts of promoting public awareness and fostering accountability throughout the system, it important not to loose sight of those it was really designed to protect. This is an excellent safeguard and feel comfortable with the proposed manner in which to reference the case records.

LINE NUMBER 213

Simply addressing the same issue as what has already been addressed in the two previous sections, the manner relating to the ambiguous reference to "exceptional circumstances". This cannot be stressed enough. Safeguards need to be in place to ensure compliance and deviance from the intended goals need to be in place!

LINE NUMBER 239

Starting on this line, references a ruling on the inclusion or exclusions of exhibits being accessible or inaccessible depending on the manner in which they are rendered. It would seem that in attempts to be clear about an exhibit not automatically being deemed accessible due to the fact that an associated document or record to that exhibit might be accessible. If in deed, this is your intent, we recommend that in addition to this summary of the rule, that a statement be made that the same rules of accessibility apply to exhibits individually as would any other documentation or court of record would be addressed.

SUBDIVISION 7

LINE NUMBER 254

The reference to the two categories of protective orders available again reference the "exceptional circumstances" however a matter that is of interest and potential need of clarification is the specific reference to any person being able to petition a hearing including representatives of the media. The reason for bringing this to focus is due to the fact that this is the first time that reference is made so specific as to mention members of the media.

We do not have any issue with this other than to ensure consistency when referencing the right by "any person" to request a hearing should a protective order be made on the court's own motion. Lack of consistency has played a large role in many of the differences in interpretations in the rules and laws of the court.

The Issue Belongs in the Control of the Judiciary

The CHIPS proceedings is the most important component of the this whole pilot project. These children who are amidst a CHIPS order are the very children that need to be reached. By excluding the CHIPS from the rules of public access completely undermines the scope of the entire project. The fact that the county is involved at that particular point in time is an obvious indicator that this child is endangered either physically, mentally, emotional or a combination of possibly all of these.

It is with strong recommendation that the CHIPS proceedings not be excluded in this pilot project. If they are excluded, this will set the stage for little or no improvements and completely miss crucial areas needing to be addressed for the purpose of fostering accountability and promoting public awareness. These children are potentially among the highest risk for serious harm and/or death in the event proper handling of these cases is not addressed.

Judicial Discretion

This being the fourth time addressed in our suggestions and recommendations to your committee, this statement clearly expresses the same concerns made in early comments by our organization in the different corresponding sections. To deny that political pressure and court bias's does not affect decisions in the court is to deny the need for the purpose of this pilot project. As we believe this would likely become the situation if county attorney's, public defender's and/or guardians in various jurisdictions exhibited a repeated pattern to close every CHIPS proceeding.

This stated concern is exactly why we feel that it also to important to address the issue regarding the ability to request a reevaluation of the "exceptional circumstances" in the event that those conditions no longer exist or in the event that those involved feel that due to a bias of the court inappropriately prohibited public access to the respective participant in a specific case.

We strongly recommend that the individuals objecting to the motion to prohibit public access in their case the right to request "proof of exceptional circumstances" regardless of the two categories of protective orders used to close public access to their respective case. This could be helpful for many reasons, the most important being that it would likely deter those objecting from making attempts to appeal the decision to prohibit public access. If proof of the exceptional circumstances was not provided, it would likely only create additional and unnecessary appellate requests served only to be denied after discovery of the "exceptional circumstances" was addressed through the process of the appeal.

SUMMARY

The success of the pilot project completely depends on the cooperation of the participants involved, giving most responsibility to the respective judge for the pilot projects involved. Minnesota can indeed follow in the footsteps of the other states who have already made public access an integral part of their system. With proper training, guidance and cooperation among all participants, we are sure that this can indeed happen.

Regardless of the outcome of the decisions for the amendments of these rules, the most important question you must all ask yourself...

Is it good for the children?

Thank you for your time and consideration. We will be looking forward to the results of this committee.

Kerri VanMeveren

Kerri VanMeveren
Executive Director

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

HEIDI S. SCHELLHAS
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-6113
FAX (612) 348-2131

May 14, 1998

Clerk of the Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

Re: Comments on Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Dear Clerk of the Appellate Courts:

Enclosed please find an original and twelve copies of a letter which Judge Thomas H. Carey sent to me as Chair of the Advisory Committee on Open Hearings in Juvenile Protection Proceedings. Although the letter is not addressed to the Clerk of the Appellate Courts, I respectfully request that Judge Carey's comments be submitted to the Supreme Court.

Thank you for your consideration.

Very truly yours,

Heidi S. Schellhas

Heidi S. Schellhas

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT

HEIDI S. SCHELLHAS
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-6113
FAX (612) 348-2131

May 14, 1998

Clerk of the Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

Re: Comments on Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Dear Clerk of the Appellate Courts:

I submit this letter as Chair of the Advisory Committee on Open Hearings in Juvenile Protection Proceedings.

Although I strongly favor the opening of juvenile protection proceedings to the public, not all of the Advisory Committee members share my viewpoint; in fact, some of the Committee members are not in favor of opening juvenile child protection proceedings to the public. Nevertheless, despite some philosophical differences among the Advisory Committee members, I am very pleased to note that the Committee members worked extremely well together and reached consensus on the proposed rule without any member or members feeling compelled to submit a minority proposal or report to the Supreme Court. The proposed rule clearly represents the Committee members' balancing of their desire for openness with their desire to protect the privacy of the children and participants in the proceedings.

The Advisory Committee eagerly awaits the Supreme Court's decision regarding the Committee's proposed rule for the pilot project.

Very truly yours,

Heidi S. Schellhas

cc: Advisory Committee Members

May 13, 1998

Kathleen A. Blatz
Chief Justice, Minnesota Supreme Court
c/o Clerk of the Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

Dear Justice Blatz:

I am writing to give my strong personal and professional support to the Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings s outlined by the Advisory Committee to the Supreme Court.

I have worked in social services since the days of the 'War on Poverty' and in child protection since 1985; I have become increasingly convinced over the years that the closed systems constructed to protect children have, in fact, continued the secret maltreatment of those very children, albeit unintentionally.

It is clear to me that the legal procedures used in Juvenile Court and the decisions made regarding maltreatment of children need public thought. So, too, do the procedures and policies of the public social welfare agencies entrusted with the welfare of these same children; that, however, is a matter for another pilot study.

I believe that the Proposed Rule is the first step to open scrutiny of the child protection system and is appropriately initiated in Juvenile Court. I ardently support your proposed pilot project and will do anything I can to help those who have an interest in seeing this project operate effectively.

Please call on me if I can be of help in any way.

Sincerely,

Audrey D. Saxton

Audrey D. Saxton, MSW, MPA
348-7607

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE GARY J. MEYER
CHIEF JUDGE

CHAMBERS
WRIGHT COUNTY COURTHOUSE
10 SECOND STREET NW, ROOM 201
BUFFALO, MINNESOTA 55313-1192
(612) 682-7539

SHERBURNE COUNTY COURTHOUSE
13880 HIGHWAY 10
ELK RIVER, MINNESOTA 55330-4608
(612) 241-2800

May 19, 1998

Chief Justice Kathleen Blatz
and Associate Justices
Minnesota Supreme Court
424 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Comments on Proposed Rule on Public Access to Record Relating to Open Juvenile Protection Proceedings

Dear Chief Justice Blatz and Associate Justices:

I am submitting this letter to the Supreme Court on behalf of the Conference of Chief Judges.

I served as Chair of the "Open CHIPS" of the Conference of Chief Judges I am also Chair of the Administration Committee of the Conference, and was a member of the Advisory Committee on Open Hearings ("Rules Committee") chaired by Judge Schellhas.

While I did not favor the opening of juvenile protection proceedings to the public, I do favor adoption of the proposed rules. Most members of the Conference of Chief Judges had reservations about opening up those proceedings, and made recommendations for the pilot projects. You have already approved some of those recommendations (three year pilot; independent evaluation) and in the main, the Advisory Committee has adopted the sense of the rest of them. The Committee had good representation from divergent opinions, and worked out a consensus which recognizes the importance of openness, but will help protect the children who are subjects of the Open Pilots.

The Administration Committee of the Conference of Chief Judges recommended approval of the proposed rules to the full Conference at its meeting in April, and on May 15 the full Conference of Chief Judges also recommended approval of those Rules. The vote at the Conference was unanimous.

I encourage you to approve the proposed Rules of the Advisory Committee.

Very truly yours,

Gary J. Meyer
Chief Judge, Tenth Judicial District

cc: Bill Walker; Sue Dosal; Heidi Schellhas

THE SUPREME COURT OF MINNESOTA
RESEARCH AND PLANNING
STATE COURT ADMINISTRATION
120 MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155

Michael B. Johnson
Staff Attorney

(612) 297-7584
Facsimile (612) 296-6609

May 15, 1998

Mr. Fred Grittner
Clerk of the Appellate courts
305 Minnesota Judicial Center
St. Paul, Minnesota 55155

RE: C2-95-1476
Comment by Mark Toogood on
Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

Dear Mr. Grittner:

At the request of advisory committee member Mark Toogood, Hennepin County Guardian ad Litem Program, I am submitting twelve copies of a May 13, 1998 email message from Mr. Toogood as a written comment regarding the proposed rule on public access to records of open juvenile protection proceedings.

If there are any questions, please contact me immediately. Thank you.

Sincerely yours

Mike Johnson

Michael Johnson
Advisory Committee Staff

enc.

cc: Mark Toogood

Date: Wednesday, 13 May 1998 4:29pm CT
To: Mike.Johnson@courts.state.mn.us
Cc: JUDGE.SCHELLHAS, DEB.KEMPI, MARK.TOOGOOD
From: MARK.TOOGOOD@HC
Subject: Open Records: Comments

Mike: Please pass these concerns/comments on to the Clerk of the Appellate Courts regarding the Proposed Rule on Public Access.

1) Knowledge of the existence of a case. The presumption of Public Access assumes, a priori, that an interested person is aware that a case exists. Yet, there is no "gateway" provision that spells out a right to know that a case even exists. For example, a relative who is concerned about a child and calls the Juvenile Court should be able to find out: a) Does an open CHIPs file exist with respect to this child?; b) When is the next court hearing on the matter?
Do we need to spell out this aspect of openness in the Rules?

2) Will cases where there are multiple allegations which(include sex abuse)be totally inaccessible because of the sex abuse? Or, will it be possibleto redact those portions that deal with the sex abuse and leave in the rest? Who is going to do this heavy editing? Will it be obvious anyway, from the redacting, that this is a child who has been sexually abused?

3) In cases where there is a non-respondent who is a perpetrator will someone be able to find out about that person's involvement in the CHIPs? For example, a mother is involved in CP due to failure to protect a child from a violent boyfriend who is not the father of her child. If the case is filed in the mother's name and the boyfriend is not listed on the face of the petition,nor entered in the database because he's not a father, a concerned person would not now be able to find out about a related CHIPs. Do we need to recommend that there be some cross-referencing done to ensure access?E.g. Add the boyfriend to the face of the petition?

4)Is there a need to identify concurrent criminal and CHIPs matters on the face of the petition so an interested person could perhaps bring something into CHIPs that happened in criminal?

5) Need to operationally define "exceptional circumstances." E.G. Exceptionaly circumstances means "clearly contrary to the child's safety or best interests."

6) If a party challenges the closure of a hearing under the exceptional circumstances rule, will the challenger have the right to participate in that hearing?

Thank you for all your work on these rules!

Mark
348-9826

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May 15, 1998

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

RE: C2-95-1476

Dear Mr. Grittner:

Enclosed for filing please find the original and twelve copies of the Hennepin County Attorney's Office comments on the Proposed Rule on Public Access to Juvenile Protection Proceedings.

Very truly yours,

MICHAEL O. FREEMAN
HENNEPIN COUNTY ATTORNEY

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ASA:cmg

Enclosure

C: Honorable Heidi Schellhaus
Dr. David Sanders

Office of the Hennepin County Attorney
Early Intervention and Protection Division

COMMENTS ON PROPOSED RULE ON PUBLIC ACCESS TO RECORDS
RELATING TO OPEN JUVENILE PROTECTION PROCEEDINGS

May 15, 1998

The Hennepin County Attorney's Office supports the pilot project opening Juvenile Protection proceedings to the public. The Office supports the promulgation of a rule pertaining to records and accessibility in these proceedings as necessary and important direction to practitioners, parties, court staff and the public. The Hennepin County Attorney's Office respectfully offers these comments on the proposed rule.

Inconsistency between Statute and Rule:

In April the legislature promulgated chapter 406 amending Minn. Stat. 260.161 subd. 2 to provide for public access to certain court records in child in need of protection or services proceedings authorized to be open to the public under the order for the pilot projects. The new statute continues inaccessibility of certain records the proposed rule does not. Although Rule 4 of Mn. R. Public Access to Records would resolve any conflict, this Office recommends the rule be consistent with the statute. Specifically, the following items are listed as inaccessible under the statute, but appear to be accessible under the rule:

a. social service records including child protection intake reports;
b. guardian ad litem reports;
c. non-party witnesses under the age of 18;
d. fingerprinting material;
e. presentence evaluations of juveniles and probation reports;
f. reports issued by sexual predator programs;
g. diversion records of juveniles.

Also, the statute imposes a time limit on accessibility of records; the rule does not. The Office recommends the rule be made consistent with the statute or that reference be made to this statutory time limit in the comments.

Recommendations for Further Categories of Inaccessible Records:

The County Attorney's Office respectfully recommends that the rule categorize additional items as inaccessible to the public for the following reasons:

1. names and addresses of shelter and foster parents:

   Under Minn. Stat. 13.46 subd. 4, the names and addresses of persons licensed to provide shelter care and foster care for children are public data. This means anytime a foster parent's name appears in any child's case record, any member of the public including a parent can find the location of that child by calling licensing for the address of the foster parent. This poses a danger for some children whose whereabouts must be kept confidential. While one approach to this might be to address this on a case by case basis by use of a protective order, it is not always possible to anticipate which cases are potential problems. Also, many times a child is placed with other

children, not of the same biological family. The parents may know each other or the children may talk about who is in placement with them. In any event, the parent may have access to information about the address of that parent's child through another child's case record.

Public accessibility of the identity of particular foster parents of a child could also have a chilling effect on recruitment efforts for appropriate foster care providers for some of the most needy and severely abused children. Many potential foster care parents might not be willing to accept possible additional problems involved with having their whereabouts readily accessible to potentially dangerous family members and the press.

2. names, addresses, other identifying information and the statements of any nonparty witness under 18:

This addition would be consistent with statutory language cited above. It is also an appropriate expansion of the current policy reflected in the rule, which already provides protection for child victims of sexual assault and for victim's statements. It is often the case that a child's statement about abuse or neglect might not fall into either category. This provision would protect the identity of a child, not party to the CHIPS proceeding, who makes a statement about what the child has seen happen to another child. The policy supporting child victims should extend to nonparty child witnesses. This Office recommends the rule add a category on page 2 after line 38, (m) portions of juvenile court records that identify a nonparty child witness.

3. any audio or video tape of a child alleging or describing physical abuse, sexual abuse, or neglect of the child or any child;

The category on page 1 at line 23, as described, is too narrow and is not consistent with Minn. Stat. 611A.90. It could be interpreted to exclude (and therefore make accessible) Cornerhouse tapes or tapes made at similar facilities. While Minn. Stat. 611A.90 just applies to videotapes, we recommend expansion to include audiotapes. On page 1 at line 23, this Office recommends adding after "agency" and any audiotape or videotape of a child alleging or describing physical abuse, sexual abuse, or neglect of the child or any child.

4. portions of photographs of minor siblings of a child who is a subject of the petition;

The category on page 2 at line 30 is too narrow. The photographic image of all children in the family should be protected, not just the children who are subjects of the CHIPS petition.

One page 2, at line 30, this Office recommends adding after the word "child" or minor sibling of a child.

Other Policy Considerations

Ex parte emergency protective custody orders

The proposed rule makes an ex parte order inaccessible until after the initial detention hearing. The comments says this is "[d]esigned to limit or avoid disclosure of the whereabouts of the child prior to the hearing where all parties may be heard on the custody issue." Comments at page 6, lines 186-187 The proposed language does not necessarily accomplish what it is designed to accomplish.

In some jurisdictions, the ex parte order is filed as a document separate from the CHIPS petition. The CHIPS petition contains the name and address of the child, the target of the custody order, and would be accessible. The rule should clarify that the CHIPS petition or other information filed to support the order should not be accessible until the time determined appropriate.

This Office would suggest that the appropriate time for these documents to become accessible would be after the execution of the order. This would achieve the goal of protecting the child's safety until the order is executed. If the purpose of making the order inaccessible is to protect the child until the order can be executed, this Office recommends that the rule be modified as follows:

Page 2, line 31 and 32 should be deleted and the following substituted:

(j) ex parte emergency protective custody order and submissions to the court that document the underlying basis for the order including the petition until the order is executed and the child is in protective custody;

If the purpose of the proposed language is to protect privacy rights of the child and family until after a hearing on the issue of continued custody, the proposed rule, as drafted, has the effect of treating children who are the subjects of ex parte orders differently from children taken into custody by the police. These children are frequently in virtually identical circumstances of abuse and neglect. There is no good policy reason to distinguish the two. The rule for ex parte orders should either apply only through the time the order is executed or the rule should be modified to keep CHIPS petitions filed on children who were taken into custody pursuant to Minn. Stat. 260.165 subdivision 1 (c) (2) (police holds) inaccessible until the hearing. This Office supports the first option as the better public policy and in accord with the reasons for the pilot project.

Educational records

Educational records are not listed in the proposed rule as inaccessible, but are discussed in the comments. The comments recognize that educational data is, generally, considered private. The comments cite several authorizing statutes for the schools to provide information to a county attorney's office and cautions that "[p]ractitioners will have to review the procedures under which they receive education records from schools, and where necessary, obtain relevant consents or protective orders before disclosing certain education records in their reports and submissions to the court." Comments page 6, lines 172 to 175 This Office suggests the issue be addressed more affirmatively in the rule and not as a practice issue.

Hennepin County receives 800 to 900 truancy referrals a year. Of these referrals, 500 to 600 result in CHIPS petitions. The Hennepin County Attorney's Office has worked very hard with the school districts within its jurisdiction to assure appropriate efforts by the school to correct attendance issues prior to referring the matter to this Office. Once referred for truancy, this Office has engaged in significant efforts with the school districts to make sure the responsible decision-maker for the case has all appropriate information to deliver effective services or make appropriate court orders. Because educational data is, generally, classified as private, this Office suggests accessibility to educational data be limited, by rule, to attendance data and records regarding the school's efforts to correct attendance issues; all other educational data should remain inaccessible. We recommend an additional category be added to subdivision 4 which reads (#) educational data except attendance data and data relating to the school's efforts to correct attendance problems.

This Office believes that the Comments' recommendation that practitioners examine their procedures regarding collecting and submitting educational data to include obtaining protective orders or consents in every case is not realistic due to the volume and the nature of the cases themselves. Examination of 500 to 600 cases for the need for individual protective orders would be extremely burdensome to both county attorneys and the juvenile court. We also question whether the court could, routinely in 500 to 600 cases, find "exceptional circumstances" as required under subdivision 7 of the proposed rule. Consents from the subjects of the educational data would not make the data accessible under this rule unless drafted to include the public. This Office will be reviewing our handling of educational data in conjunction with our school districts and would ask the support of a rule that would keep most of it inaccessible, at least absent further consideration.

Truancy and absenting

We believe that truancy and absenting cases, because they focus on the child's behavior, present unique issues which may not have been considered by the Advisory Committee. In many ways truancy and absenting cases are similar to delinquency cases and are often co-mingled with delinquency cases, most of which remain closed. We recommend the court ask the Advisory Committee or other committee to address the particular policy issues that truancy cases and absenting cases raise. This recommendation extends to further consideration regarding what educational data should be accessible.

State ward reviews

Review of cases of children whose guardianships have been transferred to the Commissioner of Human Services every 90 days has only been required the past two years. The new review requirements also clearly tie the purpose of the review to progress towards adoption. Further, recent statutory changes mandate notice of hearings to foster parents, relative caretakers and other relatives. This Office supports the policy behind these reviews, i.e. the scrutiny of efforts toward effecting an adoptive placement, and recognizes public accessibility is desirable in providing accountability for those efforts. However, we are concerned that there are great risks to the presumption of openness for this particular class of hearing type.

This Office is concerned that public accessibility, which includes the parent whose rights have been terminated, the close temporal proximity of these hearings to the termination proceedings, and mandatory notice to foster parents and relatives may combine to compromise recruitment efforts for adoptive homes and actually slow down the adoption process. This is completely contrary to the purpose of these hearings. The critical concern centers on a parent's right of access to continued information about the

possible adoptive placement of the child. While some cases permit openness in the adoption process, there are many that do not.

Further, accessibility may jeopardize adoptive placements or cause unnecessary problems for adoptive parents. It is impossible to predict when a parent whose rights have been terminated might try to locate that child. It might happen anytime after the hearing and be possible as long as the records of these hearings remain accessible. While this is appropriate in some cases, and provided for by law when the child is an adult if both parent and adoptee consent, it is potentially problematic in a number of ways. Persons who are willing to adopt state wards should not have the continuing threat of contact from the terminated parent added to the potential issues they may encounter.

Because the current Juvenile Protection Rules do not apply to adoption, those records remain inaccessible and this Office supports careful scrutiny of any possible change in the public accessibility of these proceedings. For the same reasons adoptions have been closed, this Office suggests rollback of the rule making state ward reviews public and providing for the accessibility of the records. This Office suggests:

1. that the court have the ability to exclude a biological or adoptive parent whose rights have been terminated as well as any relative about from the courtroom without having to determine exceptional circumstances; and
2. making the name or any identifying information regarding foster placement, pre-adoptive placement or adoptive placement inaccessible or making the post termination of parent rights portion of the juvenile protection case record inaccessible.

In the alternative, the Supreme Court may want to consider closing this type of hearing and ask the Advisory Committee or other committee to further consider access to this type of hearing or records for this type of hearing.

These comments were prepared by the undersigned, but represent the opinion and policy statements of the Hennepin County Attorney's Office.

Respectfully submitted,

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