

**STATE OF MINNESOTA
IN SUPREME COURT
C2-95-1476**

**ORDER MANDATING PUBLIC ACCESS
TO HEARINGS AND RECORDS IN
JUVENILE PROTECTION MATTERS**

By Order filed January 22, 1998, the Minnesota Supreme Court authorized each of Minnesota's ten judicial districts to identify one or more counties in which to conduct a three-year pilot project where, absent exceptional circumstances, hearings and records in juvenile protection matters would be presumed accessible to the public.

The pilot project commenced June 22, 1998, and is in effect through December 31, 2001.

Twelve counties are participating in the pilot project: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis—Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

By the same Order, the Court directed that an independent research organization conduct an evaluation of the pilot project and file a report addressing the impact of open hearings and records. The State Court Administrator's Office contracted with the National Center for State Courts to conduct the evaluation. The National Center for State Courts submitted its Final Report in August 2001.

On November 13, 2001, the Supreme Court conducted a public hearing regarding public access to hearings and records in juvenile protection matters. In addition to hearing testimony from fifteen individuals, the court received numerous written comments.

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

1. Effective July 1, 2002, all hearings are presumed to be accessible to the public, absent exceptional circumstances, in the following types of juvenile protection matters as defined in Rule 38.01 of the Rules of Juvenile Procedure and any subsequent amendments thereto:

- (a) child in need of protection or services matters;
- (b) neglected and in foster care matters;
- (c) review of foster care matters and review of out-of-home placement matters;
- (d) review of court ordered placements and permanent placement matters; and
- (e) termination of parental rights matters.

2. Hearings, or parts of hearings, in juvenile protection matters may be closed to the public by the court only in exceptional circumstances. Closure of all or part of a hearing, or the exclusion of any person from a hearing, shall not prevent the court from proceeding with the hearing or issuing a decision.

3. Except as provided in this Order, all juvenile protection case records relating to juvenile protection matters, as each of those terms is defined in Rule 38.01 of the Rules of Juvenile Protection Procedure and any subsequent amendments thereto, are presumed to be accessible to the public for inspection, copying, or release as follows:

- (a) Open Hearings Pilot Project Counties: Pursuant to the Order establishing the Open Hearings Pilot Project filed January 22, 1998, all juvenile protection case records deemed to be accessible to the public pursuant to this Order and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this Order and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.
- (b) Non-Open Hearings Pilot Project Counties: Effective July 1, 2002, all juvenile protection case records deemed to be accessible to the public pursuant to this Order and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this Order and filed in any non-open hearings pilot project county before July 1, 2002, shall not be accessible to the public for inspection, copying, or release.

4. To effectuate the provisions of this Order, Rule 44 (accessibility of juvenile protection case records), Rule 63 (presence at proceedings), and Rule 64 (closed proceedings) of the Rules of Juvenile Procedure are amended as set forth in Appendix A which is hereby incorporated into this Order as if fully set forth herein.

5. The inclusion of Advisory Committee Comments, as compiled from comments prepared by the 1998 Open Hearings Advisory Committee and the 1999 Juvenile Protection Rules Committee, as modified to reflect the provisions of this Order, is made for convenience and does not reflect court approval of the comments made therein.

6. Effective July 1, 2002, the "Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings" promulgated May 28, 1998, is repealed and its provisions as amended by this Order are incorporated into Rule 44 of the Rules of Juvenile Procedure.

7. All court files opened, and any petitions, pleadings, reports, or other documents filed with the court relating to juvenile protection matters, shall be captioned in the name of the child's parent(s), legal custodian(s), or legal guardian(s) as follows: "In the Matter of the Child(ren) of _____, Parent(s)/Legal Guardian(s)/Legal Custodian(s)."

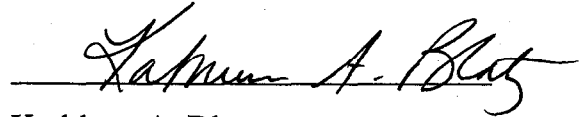
8. Minnesota Statutes § 260C.171, subd. 2(a), (b), and (c) (Supp. 2001), specifying juvenile protection records that are accessible to the public, and Minnesota Statutes § 260C.163, subd. 1(c) (Supp. 2001), precluding public access to juvenile protection hearings, are superseded insofar as they apply to public access to hearings or records of juvenile protection matters.

9. The Juvenile Protection Rules Advisory Committee shall monitor implementation of the rules mandating public access to hearings and records in juvenile protection matters and shall make recommendations for revisions as deemed necessary.

10. The Open Hearings Pilot Project in the twelve pilot project counties is extended through June 30, 2002.

Dated: December 26, 2001

BY THE COURT:

A handwritten signature in cursive script, reading "Kathleen A. Blatz", written over a horizontal line.

Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

DEC 26 2001

FILED

APPENDIX A: AMENDMENTS TO RULES OF JUVENILE PROCEDURE

~~RULE 44. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS~~

~~Rule 44.01. Availability of Juvenile Protection Case Records~~

~~Juvenile protection case records shall be available for disclosure, inspection, copying, and release as required by statute or these rules.~~

Advisory Committee Comment

~~“Juvenile protection case records” is defined at Rule 38.01(g) and specifically excludes judicial work product and drafts.~~

~~On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. *Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998), and Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998).* The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis—Virginia, Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the pilot project. Rule 44 applies in counties that are not part of the Open Hearings Pilot Project.~~

Rule 44.02. No Order Required

~~**Subdivision 1. Generally.** Unless the court issues a protective order regarding a record or a portion of a record, juvenile protection case records shall be available for disclosure, inspection, copying, and release to the following without a court order:~~

- ~~(a) — the court and court personnel;~~
- ~~(b) — any party;~~
- ~~(c) — counsel for any party or the child; and~~
- ~~(d) — the county attorney.~~

~~**Subd. 2. Parent's Rights Terminated.** If a parent's rights to a child have been terminated, that parent shall not have access to records of further proceedings involving the child.~~

~~**Subd. 3. Other Agencies.** The court shall forward data to agencies and others as required by statute.~~

~~**Subd. 4. Counsel Sharing Record with Client.** Unless the court issues a protective order pursuant to Rule 44.05, counsel for a party may only share juvenile protection case records with that party consistent with state and federal access rules.~~

Advisory Committee Comment

~~Minnesota Statutes § 260C.171, subd. 1, mandates that “[u]nless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child’s parent or guardian.” Rule 44.02 reflects the statutory language and provides that parties may have direct access to juvenile protection case records. The court may at any time issue a protective order regarding specific juvenile protection case records. If a party believes that certain~~

documents are particularly sensitive, the party may ask the court to issue a protective order.

A parent whose rights to a child have been terminated is not a party to subsequent proceedings in juvenile court and does not have the right to access post-termination records.

Rule 44.03. Court Order Required

Subdivision 1. Person(s) with Custody or Supervision of the Child, and Others. The court may order juvenile protection case records, or portions of juvenile protection case records, to be made available for inspection, copying, disclosure, or release subject to such conditions as the court may direct, to:

- (a) — a representative of a state or private agency providing supervision or having custody of the child under order of the court;
- (b) — any individual for whom such record is needed to assist or to supervise the child or parent in fulfilling a court order; or
- (c) — any other person having a legitimate interest in the child or in the operation of the court.

Subd. 2. Public. A court order is required before any inspection, copying, disclosure, or release of a juvenile protection case record, or any portion of a juvenile protection case record, to the public. Before any court order is made, the court must find that inspection, copying, disclosure, or release is:

- (a) — in the best interests of the child;
- (b) — in the interests of public safety; or
- (c) — necessary for the functioning of the juvenile court system.

~~Rule 44.04. Disclosure to Employer and Military Prohibited~~

~~Juvenile protection case records shall not be inspected, copied, disclosed, or released to any present or prospective employer of the child or the military services.~~

~~Rule 44.05. Protective Order~~

~~Upon motion pursuant to Rule 51, and for good cause shown, the court may at any time issue a protective order regarding any record or portion of a record. The court may require an ex parte showing that inspection, disclosure, copying, or release of the record is necessary and in the best interests of the child, public safety, or the functioning of the juvenile court system. Pursuant to Minnesota Statutes § 260C.171, subd. 3, the court may issue a protective order prohibiting an attorney from sharing a record or portion of a record with a client other than a guardian ad litem.~~

~~Rule 44.06. Procedure for Requesting Access~~

~~The procedures for requesting access to case records are set forth in the Rules of Public Access to the Records of the Judicial Branch.~~

~~Advisory Committee Comment~~

~~Rule 44.06 refers to the Rules of Public Access to the Records of the Judicial Branch. Those rules set forth the procedures for requesting access to records and for determining fees when copies are requested.~~

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

RULE 44. ACCESS TO JUVENILE PROTECTION CASE RECORDS

Rule 44.01 Subdivision 1. Presumption of Public Access to Records

Except as otherwise provided in Rule 44~~this rule~~, all juvenile protection case records relating to ~~the pilot project on open~~ juvenile protection matters proceedings, as those terms are defined in Rule 38.01, 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.~~ Minnesota Statutes § 260C.171, subd. 2(a), (b), and (c), is superseded insofar as it applies to public access to records of juvenile protection matters.

Advisory Committee Comment -- 1998 ~~2001~~ Amendment

~~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.~~

Rule 44.01 Subdivision 1 establishes a presumption of public access to juvenile protection court case records, and exceptions to this presumption

are set forth in the remaining ~~subdivisions~~ provisions of Rule 44. Rule 44.01 does not apply to any case records relating to adoption proceedings.

Rule 44.02-Subdivision 2. Effective Date

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible available to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county before to July 1, 2002, shall not be accessible to the public for inspection, copying, or release.

Advisory Committee Comment -- 1998-2001 Amendment

Rule 44.02 identifies different effective dates for the pilot project counties (June 1998) and non-pilot project counties (July 2002) because the twelve pilot counties already permit public access to hearings and records under the open hearings pilot project. Twelve counties are participating in the open hearings pilot project which commenced June 28, 1998, and extends though June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis—Virginia (Sixth

Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District). 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; public access to these records is governed by existing rules and statutes.

Rule 44.03 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 juvenile protection case records relating to ~~open juvenile protection matters 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.

Advisory Committee Comment -- 1998 2001 Amendment

Rule 44.03 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 notes of a social worker or guardian ad litem. Aggregate statistics on

juvenile protection cases that do not identify parties or 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. Parties and participants in a juvenile protection matter ~~case~~ may have greater access rights than the general public. *See, e.g.,* Minn. R. Juv. P. 53 (2001)-~~64.02, subdivision 2 (1997)~~.

Rule 44.03 ~~Subdivision 3~~ preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (Supp. Supp. 2001-1966). 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 (Supp. 2001-1996). 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) (Supp. 2001-1998).

Rule 44.03 ~~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. § 546.24~~546.24~~ - .25 (Supp. 2001-1996). Access Rule 4, subd. 1(c) (2001-1998).

The "Court Services Records" provision of Access Rule 4, subdivision 1(b)₂ 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~~ concept of public access to juvenile protection matters. 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.

Rule 44.04 ~~Subdivision 4~~. Records Not Accessible to the Public

Except for access to exhibits as provided identified in Rule 44.05 ~~subdivision 5 of this rule~~, the following juvenile protection case records relating to ~~open~~ juvenile protection matters proceedings shall not be accessible to the public:

- (a) transcripts, stenographic notes₂, and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge;
- (b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;
- (c) victim's₁ statements;
- (d) portions of juvenile protection case court records that identify reporters of abuse or neglect;
- (e) HIV test results;
- (f) medical records₂, ~~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;
- (i) applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a Child in Need of Protection or

Services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);

(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 provided to an Indian tribe by a local social services agency pursuant to 25 U.S.C. § 1912 (the Indian Child Welfare Act);

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

(m) records or portions of records that identify the ~~home or institution name,~~ address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to emergency protective care placement, foster care placement, pre-adoptive placement, or adoptive placement, or any other type of court ordered placement.

Advisory Committee Comment -- 1998-2001 Amendment

Rule 44.04(a) Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. ~~The Supreme Court has directed that hearings under the pilot project~~ Hearings or portions of hearings 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, No. C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998).*

Rule 44.04(b) Subdivision 4(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001-1996), during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (Supp. 2001-1996), 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 three hours of video tapes received in evidence in criminal trial). Similarly, Rule 44.04(c) subdivision 4(e) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001-1996). This is consistent with Minn. Stat. § 609.115, subs. 1, 5; § 609.2244; and § 611A.037 (Supp. 2001-1996 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 of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 44.04(b) and (c) subdivisions 4(b) and 4(e), 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, Rule 44.04(d) subdivision 4(d) prohibits public access to "information identifying portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "information- portions of records that identify 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 to the public for inspection and copying by the public. Similarly, Rule 44.04(e) subdivision 4(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and Rule

44.04(h) 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 Rule 44.04(d) 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 (Supp. 2001~~1996~~ and Supp. 1997). Rule 44.04(d) 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) and § 5106a(b)(3) (1998); 45 C.F.R. § § 1340.1 to 1340.20 (1997). Rule 44.04(d) Subdivision 4(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 44.04(e) 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 (Supp. 2001~~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).

Rule 44.04(f) and (g) 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 sexual offender treatment program reports, unless admitted into evidence

under (see Rule 44.05 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 (Supp. 2001~~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 written consents from the parties 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 before 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 before 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 (Supp. 2001-1996) (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 written 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).

Rule 44.04(h) prohibits public access to portions of photographs that identify a child, and 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 Rule 44.07 Subdivision 7).

Rule 44.04(i) 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 reduce the risk that a parent, guardian, or custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. *See, e.g.,* Minn. R. Juv. P. 65 (Supp. 2001) 51 (1997) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by

the court; 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). Rule 44.04(j) Subdivision 4(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

Rule 44.04(j) 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. Rule 44.04(j) 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 (Supp. 2001-1996). Thus, the term "sexual assault" includes any act described in Minnesota Statutes § 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) (Supp. 2001-1996) ("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). Rule 44.04(j) Subdivision 4(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 44.04(k) Subdivision 4(k) precludes public access to the notice of pending proceedings given by the local social services agency 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 about ~~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 believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 44.04(k) Subdivision 4(k) does not preclude public access to intervention motions or transfer petitions.

Rule 44.04(l) 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 Rule 44.04(a) subdivision 4(a). Procedures for issuing protective orders are set forth in Rule 44.07 Subdivision 7.

Rule 44.04(m) Subdivision 4(m) prohibits public access to ~~identifying information~~ the names, addresses, home, location, or other identifying information about the (i.e., names, addresses, etc.) of foster parents, foster care institutions, ~~and~~ adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce

the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member.

Notwithstanding the list of inaccessible case records in Rule 44.04(a) through (m), ~~subdivision 4(a) through 4(m)~~, many juvenile protection 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 workers and a guardians ad litem. With the exception of information that must be redacted under Rule 44.04(d), (e), and (h), ~~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 guardian ad litem ~~court services~~ report might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 44.04(f), ~~the~~ discussion of the details of that evaluation in the social services or guardian ad litem ~~court services~~ report need not be redacted before 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 before the effective date of this rule ~~the pilot project~~ (see Rule 44.02 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 Rule 44.03 subdivision 3).

Rule 44.05 Subdivision 5. Access to Exhibits

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to Rule 44.07.

Advisory Committee Comment -- 1998-2001 Amendment

Rule 44.05 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 Rule 44.07 subdivision 7). Thus, any of the records identified in Rule 44.04 (b) through (k) 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 Rule 44.05 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" to be accessible to the public under Rule 44.05 subdivision 5.

Rule 44.06 Subdivision 6. Access to Court Information Systems

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

Advisory Committee Comment -- 1998-2001 Amendment

Rule 44.06 Subdivision 6 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Rule 44.06 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 Advisory Committee to recommend that case titles in the petition and other documents include only the names of the

parent or other legal custodian or legal guardian, and exclude the names or initials of the children (see Rule 44.08 subdivision 8). Rule 44.06 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, Rule 44.06 subdivision 6 allows the district court to make those accessible to the public; for example, by order of the chief judge of the judicial district.

Rule 44.07 Subdivision 7. Protective Order

Upon motion and hearing, a court may issue an order prohibiting public access to juvenile protection court case records that are otherwise accessible to the public only if the court finds that ~~there are exceptional circumstances~~ exists supporting issuance of the order. The protective order shall state the reason for issuance of the order. The court may also issue a protective order on its own motion and without a hearing pursuant to Rule 44.04(1) subdivision 4(1) of this rule, but shall schedule a hearing on the order as soon as possible at the request of any person.

Advisory Committee Comment -- 1998-2001 Amendment

Rule 44.07 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~~.

Rule 44.08 Subdivision 8. Case Captions

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection court files opened, and any petitions, pleadings, reports, or other documents filed, in a any of the twelve open hearings pilot project ~~counties~~ county on or after June 22, 1998, shall be captioned in the name of the child's parent(s), legal custodian, or legal guardian as follows: "In the Matter of the Child(ren) of _____, Parent(s)/Legal Guardian(s)/Legal Custodian(s)."

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection court files opened, and any petitions, pleadings, reports, or other documents filed, in any non-open hearings pilot project county on or after July 1, 2002, shall be captioned in the name of the child's parent(s), legal custodian, or legal guardian as follows: " In the Matter of the Child(ren) of _____, Parent(s)/Legal Guardian(s)/Legal Custodian(s)."

Advisory Committee Comment -- 1998-2001 Amendment

Twelve counties are participating in the pilot project which commenced June 28, 1998, and extends though June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis—Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

The change in case captions under Rule 44.08 Subdivision 8 is designed to minimize the stigma to children involved in ~~open~~ juvenile protection matters that are accessible to the public 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.

RULE 63. ACCESS TO HEARINGS ~~PRESENCE AT PROCEEDINGS~~

Rule 63.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. Minnesota Statutes § 260C.163, subd. 1(c), is superseded insofar as it applies to public access to hearings in juvenile protection matters.

Rule ~~63.02~~ 63.01. Party and Participant Attendance at ~~Right to Attend~~ Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 63.01, any ~~Any party person~~ who is entitled to summons pursuant to Rule 69.02 or any participant who is entitled to notice pursuant to Rule 69.03, these rules, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 63.04.

Advisory Committee Comment

Pursuant to Rule 57, a party has the right to be present in person at any hearing. For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child's attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the county in out-of-home placement, the social services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule ~~63.03~~ 63.02. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule ~~63.04~~ 63.03. Exclusion of Parties or Participants ~~Persons from Who Have Right to Attend Hearings~~

~~In any hearing the~~ The court may temporarily exclude from any hearing the presence of any party or participant, person other than a guardian ad litem or counsel for any party or participant, or guardian ad litem when only if exceptional circumstances exist or it is in the best interests of the child to do so. If a person other than counsel or guardian ad litem or the person engages in conduct that disrupts the court, the person may be excluded from the courtroom. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant the person shall not prevent the court from proceeding with the hearing or issuing a decision.

~~Rule 63.04. Record of Exclusion and Right to Continued Participation~~

~~Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. The counsel and guardian ad litem of the excluded person have the right to remain and participate in the hearing.~~

~~RULE 64. CLOSED PROCEEDINGS~~

~~Rule 64.01. Attendance at Hearings~~

~~Only the following may attend hearings:~~

- ~~(a) — parties pursuant to Rule 57;~~
- ~~(b) — participants pursuant to Rule 58;~~
- ~~(c) — the county attorney;~~

~~(d) — persons requested by a party or by the county attorney who are approved by the court; and~~

~~(e) — persons authorized by the court under such conditions as the court may approve.~~

~~Advisory Committee Comment~~

~~On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. *Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998), and Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998).* The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis—Virginia, Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the Open Hearings Pilot Project.~~